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Foreword

In July 2008, Peru became the 41st adherent to the OECD Declaration on International Investment and Multinational Enterprises, in recognition of its significant progress in investment policy reforms to improve the country's business climate and reduce poverty. These initiatives have helped drive robust economic growth and vibrant foreign direct investment flows.

As an adherent to the Declaration, Peru commits to providing national treatment to foreign investors and to promoting responsible business conduct. The country in turn benefits from similar assurance from other adherents to treat Peruvian investors abroad fairly and to encourage their multinational enterprises operating in Peru to contribute to economic, social and environmental progress. Implementation of the Declaration also involves the establishment by Peru of a National Contact Point responsible for promoting observance of the OECD Guidelines for Multinational Enterprises, an integral part of the OECD Declaration. As an adherent, Peru will participate in the work of the OECD Investment Committee.

This publication is based on the report prepared to support the examination of Peru's investment policies by the OECD Investment Committee as a part of the process of Peru's adherence to the OECD Declaration. The examination took place in June 2008 at OECD headquarters in Paris in the presence of the Peruvian delegation led by Hernan Garrido-Lecca, Minister of Health.

The report was prepared by Blanka Kalinova, Senior Economist in the Investment Division headed by Pierre Poret in the OECD Directorate for Financial and Enterprise Affairs (DAF), in close co-operation with the Peruvian authorities, notably Peru's Private Investment Promotion Agency (ProInversión). Other parts of the OECD contributed to this work, in particular the DAF Competition Division and the Centre for Tax Policy and Administration. The Investment Division's communication officer is Pamela Duffin.

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List of Abbreviations

APEC	Asia-Pacific Economic Co-operation
BCRP	Central Bank of Peru
BIT	Bilateral investment treaty
CAN	Andean Community
CEPLAN	National Strategic Planning Centre
CETICOS	Centres for Exports, Transformation, Industry, Trading and Services
COFOPRI	Organisation for the Formalisation of Informal Properties
CONAM	National Commission on Environment
ECA	Economic Complementarity Agreement
FDI	Foreign direct investment
FONAFE	National Fund for Financing of State Business Activities
FONCEPRI	Fund for Promotion of Private Investment in Public Infrastructure Works and Public Services
FOPRI	Fund for Promotion of Private Investment
FTA	Free Trade Agreement
ICSID	International Centre for the Settlement of Investment Disputes
INDECOPI	National Institute for Defence of Competition and Protection of Intellectual Property
INGEMMET	Mining and Metal Geology Institute
LAIA	Latin America Integration Association
MFN	Most-Favoured-Nation
MIGA	Multilateral Investment Guarantee Agency
MNE	Multinational Enterprises
NAFTA	North America Free Trade Agreement
NCP	National Contact Point
OECD	Organisation for Economic Co-operation and Development
PFI	Policy Framework for Investment
ProInversión	Peru's Private Investment Promotion Agency
SME	Small and medium enterprises
SNIP	National Public Investment System
SUNARP	National Supervisory Authority of Public Registries
SUNAT	National Tax Administration Supervisory Authority
TPA	Trade Promotion Agreement

TRIMs	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
WAIPA	World Association of Investment Promotion Agencies
WTO	World Trade Organisation

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Executive Summary

Stimulated by a favourable external environment and the government's commitments to political and economic stability, Peru's economy has recorded since 2002 the fastest growth in South America. Foreign direct investment inflows have started to rise since 2005 and reached a record level of USD 5.4 billion in 2007, an increase of more than 50% compared to 2006. As a result, the country's inward stock surged to USD 24.7 billion in 2007. With 47% of total foreign direct investment, Spain and the United States are the major foreign investors. Among different sectors, telecommunications attracted 28% of total foreign investment, followed by mining (20%), manufacturing (18%) and the financial sector (16%). Since 2006, a number of large Peruvian companies have begun to invest abroad.

Foreign investment has been a critical element in Peru's recent economic development. It has contributed to enhance its export potential and encourage job creation, including in services. Involvement of foreign investors has accelerated expansion of the mining and energy sectors, which represent an important source of tax revenues and generate significant resources for public investment in some regions. Participation of foreign investors in the privatisation process has stimulated competition and modernisation, in particular in telecommunications and banking, leading to noticeable improvements in provision of these services to population. To reap the benefits of investment liberalisation, Peru has to continue to attract further investment in infrastructure, address regional disparities, pursue an active social policy and implement the poverty alleviation strategy.

Peru has established an open and transparent investment regime. The principle of non-discrimination underpins the country's legislation and regulations governing investment, notably the Foreign Investment Promotion Law and the Framework Law on Private Investment Growth. All enterprises have the right to organise and develop their activities under the form they deem appropriate. Peru has taken far-reaching measures to improve regulatory transparency at all levels of government. An enterprise that considers itself threatened or adversely affected by any law or governmental decision can file a lawsuit to the Market Access Commission, part of the National Institute for Defence of Competition and Protection of Intellectual Property (INDECOPI). The Framework Law provides for the possibility of signing "legal stability agreements" with interested domestic and foreign investors for transactions above a certain size, which guarantee in particular the tax treatment in force at the time of the investment. As Peru's policy framework has stabilised over the last decade, investors' interest in these agreements has diminished.

Peru applies a limited number of restrictions on foreign investment which are reflected in the list of exceptions to national treatment (see Annex A). The country maintains a restriction on foreign ownership of land, water and energy resources located within 50 km of its borders, for national security reasons. Peru has agreed not to invoke the national security clause of the National Treatment instrument but to include this restriction in its proposed list of exceptions, thereby placing it within the disciplines of the instrument. This is consistent with the OECD Investment Committee's approach, which encourages adhering governments to refrain from extensive recourse to the national security clause of the instrument.

Other sectoral exceptions to national treatment concern equity ownership restrictions in broadcasting, air transport and water services. These exceptions, which Peru lodged under the National Treatment instrument of the OECD Declaration, are present in a number of OECD and other adhering countries. Peru agrees that the restrictions become subject to periodic examination by the Organisation after adherence, pursuant to the instrument's disciplines. Peru's Constitution includes a principle of reciprocity, but to date it has not been applied to foreign investments. The Government's presumption is that insofar as countries adhere to the OECD Declaration and its National Treatment instrument, reciprocity conditions will not be applied to them.

The National Treatment instrument covers other measures bearing on foreign investment and requires that they be reported for transparency. Peru has limitations applicable to the foreign and domestic enterprises on employment of foreign personnel in services companies, and requirements to hire Peruvian nationals or residents in key personnel in four specific sectors (see Annex A). Government purchasing of goods and services classified as military secrets are excluded from the general procurement regime. Peru has notified that with the exception of trade in coca, there is no state or private monopoly. The State maintains majority stakes in 31 firms in electricity, banking, securities, real estate, petroleum, ports, water and sewage. Combining existing limited restrictions and these other measures altogether, Peru ranks among the most open economies by the OECD FDI Regulatory Restrictiveness Index.

Peru has made significant progress towards a unified investment regime. Existing tax incentives are applied on a sectoral or territorial basis irrespective of investors' national or foreign origin. High costs associated with tax exemptions have prompted the government to streamline the tax incentives regime. A report must be submitted to Congress on any tax exemptions, incentives and other benefits granted to investors by various ministries which will subsist after March 2009, justifying their extension and presenting plans for their eventual elimination. The Legislative Decree which entered into force in March 2008 stipulates that all legislative proposals concerning new tax benefits must explain the objective and scope of the proposed measure, estimated fiscal costs and expected economic benefits. Proposed tax exemptions and incentives should not exceed six years. Investment facilitation and promotion activities are under the responsibility of the Private Investment Promotion Agency (*ProInversión*), which has a leading role in identifying remaining barriers affecting private investment and proposing policy responses to enhance the country's investment environment.

Peru has pursued active international investment diplomacy. It has signed 32 bilateral investment treaties with most of its North and South America's neighbours and a number of European and Asian countries. The treaties are negotiated by a special commission led by *ProInversión*, which has developed guidelines to promote high standards for transparency, investment protection and treatment in Peru's agreements, including provisions for investor-state dispute settlement. The recent Peru-United States Trade Promotion Agreement (TPA) signed in 2006 includes a detailed investment chapter based on these standards. The TPA also enhances the commitments and co-operation of the parties with respect to internationally recognised labour standards and environmental matters. Similar agreements are being negotiated by Peru with other countries. Peru is member of several regional groupings and agreements. It chairs the Asia-Pacific Economic Co-operation (APEC) in 2008 and seeks to promote a closer dialogue between APEC and the OECD on investment, in particular co-operation on the OECD Policy Framework for Investment.

With regard to the OECD Guidelines for Multinational Enterprises, which are an integral part of the OECD Declaration, the Peruvian government has indicated its commitment to take the necessary steps, without delay following adherence, to establish its National Contact Point. Peru is committed to ensuring that its National Contact Point will meet the criteria of visibility, accessibility, transparency and accountability and make the Guidelines better known to business, labour representatives, and other interested parts of Peruvian civil society. Peru's National Contact Point will be located in *ProInversión* and will allow for stakeholder's involvement. The nation has already subscribed to most multilateral instruments underpinning principles and standards embodied in the Guidelines.

The Peruvian authorities have also indicated that they accept the commitments under the other two instruments of the Declaration: the Decision on International Investment Incentives and Disincentives by which adhering countries recognise the need to give due weight to the interest of other adhering countries affected by laws and practices in this field and endeavour to make measures as transparent as possible; and the Decision on Conflicting Requirements, by which adhering countries shall co-operate so as to avoid or minimise imposition of conflicting requirements on multinational enterprises. Given the rapid pace of policy reforms, Peru will report on new developments to the OECD Investment Committee within one year following its adherence to the Declaration on International Investment and Multinational Enterprises.

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Chapter 1

Peru's External Economic Relations

Alongside dynamic economic growth, foreign direct investment inflows have been rising since 2005 and reached USD 5.4 billion in 2007, an increase of more than 50% compared to 2006. Foreign investment has played a growing role in Peru's recent development by stimulating its exports, providing new job opportunities and improving the quality of services and infrastructure. Peru pursues active international investment diplomacy and has become member of a number of regional and bilateral agreements.

1. Recent trends in FDI patterns

Since 2002, Peru has been the fastest growing economy in South America. Its vibrant economic development has been stimulated by favourable external environment and the government's strong commitments to political, economic and legal stability. In 2007, Peru's real GDP surged by 9%, driven by private and public investment and domestic consumption. The inflation level remained moderate (1.8%) and both the budget and the current account balance were in surplus, corresponding to respectively 2.3% and 1.4% of GDP. Growing official reserves (USD 28 billion by the end of 2007) and advance repayments of external debt have lessened the country's vulnerability to external risks. In recognition of these achievements, the rating agency Fitch awarded Peru an investment-grade rating in April 2008. The Peruvian economy has maintained its dynamism in 2008 (GDP progressed by 9% in the first quarter).

Between 1997 and 2004, Peru's foreign direct investment (FDI) inflows fluctuated from less than USD 1 billion (in 2000) to slightly more than USD 2 billion (in 2002). They have started increasing since 2005. In 2007, FDI

Box 1.1. **Peru's international investment statistics**

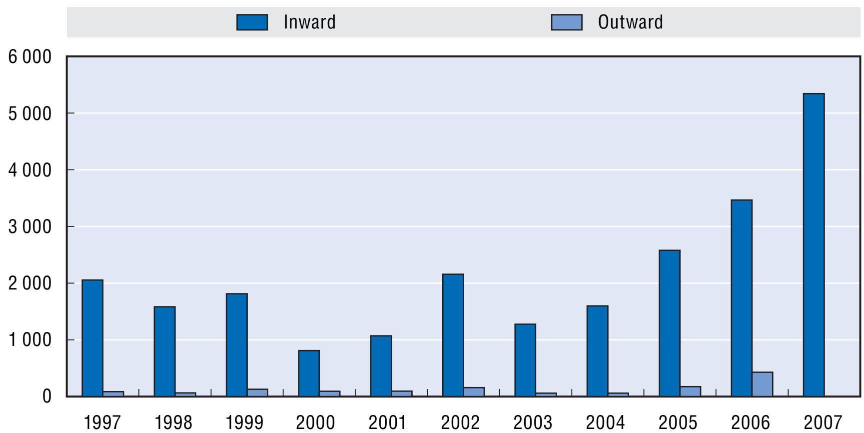
There are two sources of international investment statistics in Peru.

The Central Bank of Peru (BCRP) collects FDI data as a part of the balance of payments statistics. Consistent with the OECD Benchmark Definition of FDI, the threshold for defining FDI is at least 10% of the voting power owned by a non-resident with the objective of establishing a lasting interest in an enterprise.

Peru's Agency for Promotion of Private Investment (*ProInversión*) also provides data on FDI based on registration statements by foreign companies/ investors pursuant to Article 19 of Legislative Decree No. 662. These data are supplemented by information provided by CONASEV (*Comisión Nacional Supervisora de Empresas y Valores*, public regulatory agency supervising the stock market) and the Public Registry. The data reported by *ProInversión* cover investment that have been effectively carried out and do not include loans, merchandise valuation or any other assets not assigned to the local company equity.

inflows soared to the record level of USD 5.4 billion, a double compared to 2005 and an increase by more than 50% against 2006. In the first quarter of 2008, the growth further accelerated with FDI inflows reaching almost USD 3 billion. Until recently FDI outflows have been negligible but have gone up in the last two years (Figure 1.1).

Figure 1.1. **FDI inflows and outflows to Peru, 1997-2007 (USD million)**

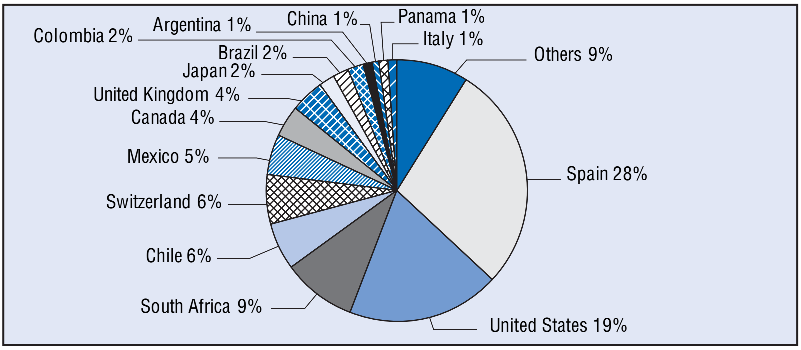


Note: Data for FDI inflows in 2007 are preliminary; data for FDI outflows in 2007 are not available.
Source: Central Bank of Peru.

According to the Central Bank's data, Peru's inward FDI stock amounted to USD 19 356 million in 2006, representing 20.7% of GDP. This has been comparable to the share observed in other Latin American countries, such as Brazil (21%) or Venezuela (25%), but remains below the level recorded for instance by Mexico (27%) and Chile (55%). The share of FDI inflows reached 18.9% in Peru's investment in 2006, still lower compared for example to Chile's share (28.3%). In 2007, Peru's FDI stock increased to USD 24 744 million.[1] These developments and recent upgrading of Peru's investment rating confirm the country's growing FDI attractiveness.

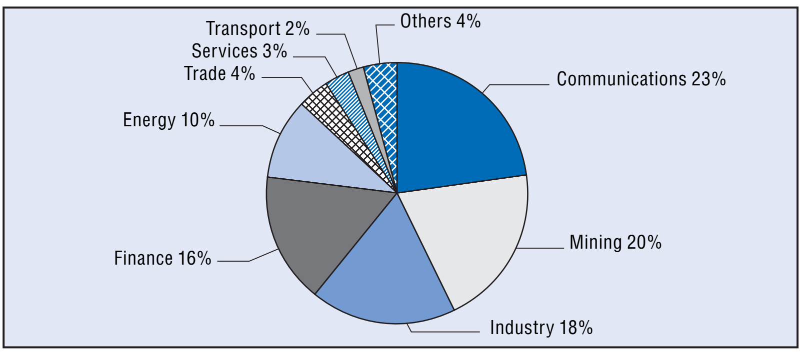
Spain has been the main country of origin of foreign investment in Peru, representing 28% of FDI stock by December 2007, followed by the United States (19%) and South Africa (9%). Together, Latin American neighbours represented 19% of Peru's FDI stock (Figure 1.2). Among different sectors, communications has attracted 23% of total FDI stock, followed by mining (20%) and manufacturing (18%). FDI in the services sector is dominated by financial services (16%), whereas other services, including transport, trade and construction together represented some 8% of the total (Figure 1.3).

Figure 1.2. **Peru's FDI stock: Main partners, 2007 (in per cent)**



Source: ProInversión.

Figure 1.3. **Peru's FDI stock: Main sectors, June 2007 (in per cent)**



Source: ProInversión.

FDI has increasingly contributed to Peru's economic development. In the last eight years, companies with foreign participation have accounted for some 52% of Peruvian exports. In stimulating competition, foreign investment has been particularly important in the development of the mining and energy sectors as well as services, notably telecommunications and banking. The mining sector represents an important source of tax revenues and generates significant resources for public investment in some regions. Participation of foreign companies in the privatization process carried on in the 1990s in telecommunications and electricity generation and distribution has been a key factor in modernisation and improved efficiency in these sectors. For the population, the most visible results have been better access and improved services in banking and telecommunications. For example, in mobile telecommunications the number of lines increased from 52 000 in 1994 to almost 15.5 millions in 2006 allowing Peru to become the country with the highest telephone density in South America (55.6% of population). Since the end of the 1990's transportation infrastructure has also started to be developed with help of foreign investors' involvement. In the near future, foreign investment is called to be a strategic partner in building the petrochemical industry, based on the exploitation of natural gas resources. The presence of international companies is also critical in enhancing productivity of local providers and regional clusters. Moreover, FDI has a growing positive impact on employment, especially in services. For example, recently established call centre facilities in Peru created more than 20 000 jobs in Lima and their expansion in other regions is expected to offer further job opportunities.

A number of large Peruvian companies have begun to invest abroad. Recent examples include AJE Group, a beverage producer company with subsidiaries in several South American and Central American countries, Mexico and Thailand; Gloria Group, a diversified corporation with facilities in Colombia, Puerto Rico, Argentina and Bolivia; Topy Top, a textile company with established subsidiaries in Venezuela and new planned installations in Colombia and Mexico. ALICORP, a food processing company, part of Romero Group, has initiated its international expansion in neighbouring countries, notably through recent acquisition of an Argentinean company for more than USD 60 million. Several Peruvian construction companies operate with in the Andean countries and Central America.

2. Peru's international investment agreements

2.1. Bilateral Agreements

The United States-Peru Trade Promotion Agreement (TPA), ratified by Peru in June 2006 and the United States in December 2007 is expected to enter into force in early 2009 and expand considerably mutual investment opportunities. It establishes high standards of the protection and enforcement of a broad range of intellectual property rights, notably for digital products and patents, trademarks and test data. The Agreement contains a full Investment Chapter, based on the United States Model BIT, which provides for a transparent and predictable legal investment framework backed by binding international arbitration mechanism. The Agreement's dispute settlement mechanisms set up high standards of openness and transparency, notably through open public hearings, public release of legal submissions by parties and opportunities for interested third parties to submit views.

The Agreement enhances the commitments and co-operation of the parties with respect to internationally-recognised labour standards and environmental matters. The parties agreed to adopt, maintain and implement in their respective laws and practice the principles concerning the core labour rights as defined in the 1998 ILO Declaration on Fundamental Principles and

Rights at Work. In the same vein, the parties take commitments to strengthen their capacities to implement and enforce laws and all other measures under the seven covered multilateral environmental agreements.[2] Moreover, the TPA establishes a co-operative mechanism for the governments to develop joint activities aimed at promoting and advancing core labour rights and environmental standards. Dispute settlement mechanisms also apply in respect to the labour and environmental obligations.

Similar provisions have been negotiated within the FTA with Canada (signed in January 2008) and with the European Free Trade Area (EFTA: Switzerland, Liechtenstein, Norway and Island). Peru is in the process of negotiating a number of other bilateral agreements, in particular the FTA with Singapore, the Economic Complementarity Agreement (ECA) with Mexico, the FTA with China, the Promotion and Protection of Investment Agreement with Japan and the association agreement between the Andean Community (CAN) and the European Union. The Extension of the ECA with Chile, which is awaiting approval by the Chilean Congress, will consolidate the legal framework for services and investment with the purpose of establishing a full Free Trade Agreement.

2.2. Regional agreements

Andean Community

Peru is member of the Andean Community (CAN) along with Bolivia, Colombia and Ecuador (Argentina, Brazil, Chile, Paraguay and Uruguay as associate members; Mexico and Panama participate as observers). In addition to trade in goods, the FTA concluded in January 2006 covers trade in some services, in particular transportation. The members seek to further intensify the Andean integration process with the goal of establishing a common market with free circulation of capital and people. The investment regime of the Andean Community guarantees national treatment to sub-regional investments. According to Decision No. 598, CAN members may negotiate trade agreements with third parties on a community, individual or joint basis.

Relations with MERCOSUR

Peru signed an Economic Complementarity Agreement (ECA) with MERCOSUR members (*i.e.* Brazil, Argentina, Uruguay and Paraguay) in August 2003. The agreement, which aims to create a free trade area, contains provisions on aspects such as intellectual property, dispute settlement and investment. In becoming an associate member of MERCOSUR in December 2003, Peru has taken a further step in deepening its regional economic integration. The leaders of the Andean Community and MERCOSUR have started to discuss the possibility of establishing a South American Community of Nations, modelled on the European Union.

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APEC

Peru became member of APEC in 1998. It has to meet the Bogor trade and investment liberalisation goals by 2020. In 2008, Peru chairs APEC and hosts the APEC Summit in November in Lima.

Other regional agreements

Within the Latin American Integration Association (LAIA), Peru has signed partial-scope agreements with Argentina, Brazil, Chile, Mexico, Paraguay and Uruguay. Peru also participated in negotiations on the Free Trade Agreement of the Americas.

Notes

1. According to the data provided by *ProInversión* which take into account only foreign investment equity, Peru's inward FDI stock amounted to USD 15.4 billion in 2006 and to USD 16 billion in 2007.
2. The seven covered agreements are the following: Convention on International Trade in Endangered Species, Montreal Protocol on Ozone Depleting Substances, Convention on Maritime Pollution, Inter-American Tropical Tuna Convention, Ramsar Convention on the Wetlands, International Convention for the Regulation of Whaling and Convention on Conservation of Antarctic Marine Living Resources.

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Chapter 2

Peru's Policy Framework for Investment

Based on the Policy Framework for Investment, the analysis of Peru's investment policy and investment promotion and facilitation shows that the country has made considerable progress in establishing an open and transparent investment regime. This is also reflected in a limited number of restrictions on foreign investment which Peru notified as exceptions to national treatment and the measures reported for transparency under the OECD Declaration on International Investment and Multinational Enterprises. Peru's investment incentives are applied on a sectoral or territorial basis irrespective of investors' national or foreign origin. Through its national policies and commitments in recent international agreements, in particular the Trade Promotion Agreement, signed with the United States, Peru has put a solid basis in support of human and labour rights and the environment and to promote responsible business conduct.

The analysis of Peru's investment policies based on the Policy Framework for Investment (PFI) (see Box 2.1), undertaken in co-operation with Peru's authorities, focuses on three chapters of the PFI dealing with investment policy, investment promotion and facilitation, and trade policy and highlights some aspects related to other PFI areas such as tax policy and infrastructure development. Peru's policies for promoting responsible business conduct (PFI Chapter 7) are reviewed in light of the standards and principles recommended in the OECD Guidelines for Multinational Enterprises (MNE).

Box 2.1. **The Policy Framework for Investment**

The Policy Framework for Investment (PFI) helps governments mobilise private investment that supports steady economic growth and sustainable development, and thus contribute to the prosperity of countries and their citizens and the fight against poverty. The PFI was developed by a task force of officials from some 60 OECD and non-OECD governments in association with business, labour, civil society and other international organisations and endorsed by OECD ministers in 2006.

The PFI represents a comprehensive multilaterally backed approach for improving investment conditions. It addresses 82 questions to governments in 10 policy areas to help them design and implement good policy practices for attracting and maximising the benefits of investment. It is based on the common values of rule of law, transparency, non-discrimination, protection of property rights, public and corporate sector integrity, and international co-operation.

The PFI can be used in various ways and purposes by different constituencies, including for self-evaluation by governments and peer reviews in regional or multilateral discussions.

1. Investment policy

The quality of investment policies directly influences the decisions of all investors, be they small or large, domestic of foreign (PFI Chapter 1). Peru's authorities have made considerable progress in implementing the main principles underpinning a sound investment environment for all, notably enhanced transparency, property protection and non-discrimination.

What steps has the government taken to ensure that the laws and regulations dealing with investments and investors, including small and medium sized enterprises, and their implementation and enforcement are clear, transparent, readily accessible and do not impose unnecessary burden?

Peru's authorities have been actively promoting regulatory transparency with an emphasis on public dissemination of existing laws and regulations. Peru's Constitution makes access to information a fundamental right (Article 2, item 5) and requires all laws and regulations be published to become valid (Article 51). Enacted laws and regulations are issued in the official gazette *El Peruano* also available online (*www.elperuano.com.pe*). The draft laws under discussion in Congress are available on its website (*www.congreso.gob.pe*). Peru's Congress has also introduced a "Citizens Portal" which makes draft laws presented to Congress publicly available and allows citizens to participate in discussions on the proposals and present their views.

The principle of transparency applies to all government's activities (Law No. 27806 of July 2002). The public administration agencies must provide any required information included in written documents or in any other format as long as such documents are in their possession or under their control. All state-owned information is assumed to be public except in a number of specific cases such as:

- Information specifically classified as secret by an agreement made by the Cabinet members on a majority basis. Such an agreement must be in writing and provide the reasons for classification. The agreement shall be reviewed every 5 years to evaluate the possibility of declassification of information concerned.
- Issues for which public knowledge may affect the interests of the country, international treaties or negotiations. Information protected by bank secrecy, tax secrecy, commercial secrecy, industrial secrecy, technological and stock-market secrecy pursuant to relevant laws.
- Inside information of public administration which contain advice, recommendations or opinions which are part of the government's consulting and decision-making process.
- Personal information that concern family and personal privacy, including information related to personal health.

All public entities must assign an officer responsible for submitting requested information (Law No. 27444 on Administrative Procedures). Information requests must be dealt with within seven working days. All public agencies must approve and publish their "Single Text on Administrative Procedures" (TUPA in Spanish), which specifies their competencies and functioning. The objective of this measure is to avoid duplication of administrative procedures and improve public access to information. The TUPA must cover the following aspects:

- List of all procedures performed by the agency; forms and competent authorities for each stage of procedures.
- Classification of procedures differentiating between those subject to automatic approval and those requiring prior evaluation.
- Payments of procedure fees, indicating the amounts and payment modalities.

The Public Administration Office of the Council of Ministers has developed an electronic service ("Service portal for citizens and companies") which provides information on the most frequently required procedures. The Positive Administrative Silence Law, adopted in January 2008, stipulates that if a public entity has failed to respond to a request within 30 days, such request is considered to be accepted. This law replaced the rule according to which the absence of reply by the administration within 30 days meant a denial of the request. This previous rule now applies only for procedures related to national security, financial and tax matters.

Several other laws and regulations include and reinforce transparency provisions, such as the procedures of access to information on public finance (Supreme Decree No. 072-2003-PM), transparency of economic regulations in telecommunications, electricity, water and public infrastructure (Supreme Decree No. 042-2005-PCM), transparency procedures of governmental agencies through consultation, pre-publication and publication of technical standards and conformity rules (Supreme Decree No. 149-2005-EF) and health-related technical regulations (Ministerial Resolution No. 826-2005-MINSA).

The Law No. 28335 of August 2004 introduced an Index of Bureaucratic Barriers to Market Access at the Municipal Level, which is published every year by the Market Access Commission of the National Institute for Defense of Competition and Protection of Intellectual Property (INDECOPI). The Index lists measures applied by municipal governments that are perceived as restricting trade and investment and identified, for example, issuing of operating licenses as among the most burdensome procedures. The publication of such concrete cases has helped many sub-national authorities assess the impact of existing procedures on market participants and prompted them to review some of their interventions thus contributing to enhance their policy decision-making.

Regulatory measures and administrative barriers considered as unnecessary or illegal may be challenged before and invalidated by the Market Access

Commission of INDECOPI in accordance with the Law for Elimination of Obstacles and Restrictions to Private Investment (Law No. 28996).

Peru's international investment agreement model contains a transparency provision. This provision has been included in the Trade Promotion Agreement (TPA) with the United States, the FTA with Canada and the ECA with Chile and is also discussed in ongoing FTAs negotiations with Singapore and BIT negotiations with Colombia.

The main legal texts relevant for foreign investors are the Foreign Investment Promotion Law (Legislative Decree No. 662 of 2 September 1991), Regulations of the Private Investment Guarantee System (Supreme Decree No. 162-92-EF of 12 October 1992) and the Framework Law for Private Investment Growth (Legislative Decree No. 757 of 13 November 1991). These laws stipulate the principle of national treatment and access of foreign investors to all activities without prior authorisation and restrictions except in some specific cases (see below). Foreign investors are not subject to any performance requirements and have the right to organise their activities under the form they consider appropriate. There are no measures preventing foreign investors to participate in privatisation programmes in Peru, and a number of foreign companies have taken part in this process, for instance Telefonica (telecommunications), ENDESA (energy) or XSTRATA (mining).

What steps has the government taken towards the progressive establishment of timely, secure and effective methods of ownership registration for land and other forms of property?

The National Public Registry System and the National Supervisory Authority of Public Registries (SUNARP) were established with the objective to modernise and simplify registration activities in Peru and ensure legal security and validity of ownership rights. The registered acts may be appealed in the Registration Court. The Registry also grants legal publicity to various acts and registered rights. The SUNARP has put in place an online public registration service which allows access to registration items inscribed in Peru's Public Registries, notably the Registry of Real Estate[1] and the Registry of Personal Property.[2]

In Peru, many properties, especially in rural areas, still lack registration history. The role of the Organisation for the Formalisation of Informal Properties (COFOPRI) is to establish legal and sustainable property rights in co-operation with regional and local governments. From the beginning of 1996 to August 2007, COFOPRI granted more than 1.5 million titles and approximately the same number have still to be granted nationwide. Formalisation of titles allows registered owners to accede to the financial market.[3]

The Mining and Metal Geology Institute (INGEMMET) is responsible for mining concessions and for managing the Mining Registry. INGEMMET also provides investors with online information on registries. The rapid development and high performance of the Peruvian Mining Registry System is viewed as an example to follow in the region.

Has the government implemented laws and regulations for the protection of intellectual property rights and effective enforcement mechanisms? Does the level of protection encourage innovation and investment by domestic and foreign firms? What steps has the government taken to develop strategies, policies and programs to meet the intellectual property needs of SMEs?

According to Peru's Constitution (Article 2, item 8), each person has the right to enjoy the freedom of intellectual, artistic, technical and scientific creation and the property of their creations and products. Specific legislation covers intellectual property and patents (Legislative Decree No. 823) and the protection of copyright (Legislative Decree No. 822). Peru's domestic legislation and regulations reflect international standards on the protection of intellectual property.

The National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOPI) is the government agency responsible for enforcing intellectual property policies, including for copyright, trademarks, patents, industrial design and other related matters. Contracts for the use of technology, patents, trademarks or other elements of intellectual property of foreign origin, technical assistance, engineering, management and franchising are freely negotiated between the parties and registered with INDECOPI. The remittance of royalties is made freely through the national financial system, after payments of corresponding taxes. INDECOPI may award obligatory licenses in the case of public interest, which are subject to appropriate remuneration and must be mainly used in the domestic market.

Peru has incorporated the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) into its national legislation (Legislative Decree No. 26497 of 18 December 1994). Provisions of intellectual property rights included in the United States-Peru Trade Promotion Agreement also compelled Peru to review and adjust its national legislation in this area. The common regime of the Andean Community for Intellectual Property dealing with industrial property, copyright, traditional knowledge and related rights was introduced into Peru's legislation and adapted in line with the WTO's TRIPS agreement (Decision No. 486 of 14 September 2000). Peru's legislation on protection of intellectual property and its compliance have been reviewed by the WTO's TRIPS Council in 2001. Peru is member of the World Intellectual Property Organisation.

> Is the system of contract enforcement effective and widely accessible to all investors? What alternative systems of dispute settlement has the government established to ensure the widest possible scope of protection at a reasonable cost?

Peru's government actively promotes arbitration as an alternative and reliable dispute resolution mechanism. According to the General Arbitration Law (No. 26572), any dispute may be submitted to arbitration, except specific cases such as disputes which *i)* have been subject to a final judicial order, *ii)* those concerning public order or related to crimes, and *iii)* those directly concerned with the sovereign attributes or functions of the State or persons or entities of the public law. Disputes arising from contracts which the Peruvian state or its public officials have made with citizens or domiciled aliens and disputes concerning their assets may be submitted to national arbitration without prior authorisation. State enterprises subject to private law or of mixed ownership may freely and without prior authorisation submit to international arbitration within or outside the country the disputes arising from contracts with citizens or domiciled aliens.

According to general Arbitration Law arbitrators should promote conciliation. The Out-of-Courts Conciliation Law (No. 26872) requires that all cases other than those concerning "non-disposable rights" (*i.e.* matters of public interest, criminal law and constitutional questions, which are within the exclusive jurisdiction of the Courts) proceed through conciliation prior to any court proceedings. Since the introduction of these requirements in March 2001, there has been a significant increase of conciliation centres in Peru (more than 500 according to the Ministry of Justice).[4]

> Does the government maintain a policy of timely, adequate, and effective compensation for expropriation also consistent with its obligations under international law? What explicit and well-defined limits on the ability to expropriate has the government established? What independent channels exist for reviewing the exercise of this power or for contesting it?

Peru's Constitution guarantees property rights for nationals and foreigners, stipulating that no person can be deprived of his property except for national security reasons or public necessity expressly declared by Law and after payment in cash of a fair-value indemnity, including redress for any possible damages.

The expropriation clause in Peru's international investment agreement covers direct expropriation as well as indirect expropriation and includes the following conditions for expropriation:

- Implementation in a non-discriminatory manner and in accordance with the due process of law.
- Compensation should be adequate, effective and made promptly.
- Compensation should be equivalent to the fair market value of the expropriate investment immediately before the expropriation took place; no change in value should occur because the intended expropriation had become known earlier.
- Compensation should be fully realisable and freely transferable.

> Has the government taken steps to establish non-discrimination as a general principle underpinning laws and regulations governing investment? In the exercise of its rights to regulate and to deliver public services, does the government have mechanisms in place to ensure transparency of remaining discriminatory restrictions on international investment and to periodically review their costs against their intended public purpose? Has the government reviewed restrictions affecting the free transfer of capital and profits and their effect on attracting investment?

The principle of non-discrimination underpins Peru's legislation and regulations governing investment. Peru's Constitution stipulates that national and foreign investors are subject to the same conditions and several laws confirm this general principle. The Foreign Investment Promotion Law (Legislative Decree No. 662) states: "Foreign investors, and the companies in which they participate, shall have the same rights and obligations as those of national investors and companies. … The national law shall, in no event, discriminate against investors or companies on the basis of the national or foreign investors participating therein… Intangible property or copyrights of foreign investors shall abide by the same provisions as those applicable to national investors" (Article 2).

According to the Framework Law on Private Investment Growth (Legislative Decree No. 757), any public entities, employees from the central, regional or local governments which would adopt discriminatory treatment towards investors are liable to a fine. An entrepreneur who considers threatened or affected by any law or governmental decision can file a lawsuit to the Market Access Commission, part of the National Institute for Defence of Competition and Protection of Intellectual Property (INDECOPI). During the first quarter of 2008, the Commission issued a favourable opinion in 25 of 37 cases presented.

The Framework Law provides for the possibility of signing "legal stability agreements" with interested domestic and foreign investors which guarantee the stability of certain rights including non-discriminatory treatment, free transfer of capital and profits, and the tax treatment in force at the time of investment. Such "law contracts" (*contractos-ley*) can be signed with *ProInversión* or the government for investment projects of more than USD 5 million and are valid for 10 years (for taxation matters) or for the whole duration of concession agreements. The legal stability agreements were introduced at the beginning of 1990s when FDI inflows were low and regulatory changes, especially in the tax area, frequent. As Peru's policy framework has stabilised over the last decade, investors' interest in these agreements has been diminishing. Since 2000, 174 legal stability agreements were signed covering investment of USD 5.2 billion.

Peru does not apply any special discriminatory authorisation or licensing procedures for foreign investment, except in the few sectors identified below. According to the Foreign Investment Law, foreign investors obtain their authorisation automatically and have to register after their establishment with *ProInversión*. Foreign companies and investors can address complaints concerning their activities in Peru to the same agencies dealing with complaints of local investors, notably the INDECOPI's Market Access Commission. There are no restrictions on free transfer of capital and profits from foreign investment (see below).

To encourage investment in all sectors, the Framework Law on Private Investment Growth abolished the State's privileges in economic activity and eliminated remaining sectoral state monopolies. According to this law, all enterprises have the right to organise and develop their activities in the form they deem appropriate. The previous regulations providing for specific production procedures, prohibiting or imposing the use of consumables or application of technical processes were revoked by this law, except with respect of environmental and health protection.

In line with the 1993 Constitution, which limits the role of the State in business activities, the government has promoted private participation in different sectors including in those where the state has maintained majority holdings. The National Fund for the Financing of State Business Activity

(FONAFE) is responsible for regulating and managing the state's business activity, in particular approving the consolidated budget of firms in which the state has a majority stake. After the wave of privatisation during the period 2000 to 2006, the state maintains majority stakes in electricity (15 firms), banks and finance (5 firms), securities and real estate (1), petroleum (2), ports (1), drinking water (1) and other sectors (6 firms). In addition, the State holds a minority stake in 21 firms (see Annex D). The government plans to list all these companies at Lima Stock Exchange.

1.1. Peru's exceptions to national treatment

Peru maintains certain limitations on foreign investment, concerning notably real estate, broadcasting, air and water transports. These restrictions are reflected in the list of exceptions (Annex A) which Peru has proposed to lodge under the National Treatment instrument of the OECD Declaration on International Investment and Multinational Enterprises.

As for **land and real estate**, foreign nationals and firms are not authorised to acquire directly or indirectly land and water resources located within 50 kilometres of the Peruvian border. Exceptions are possible subject to the authorisation by a Supreme Decree approved by the Council of Ministers in the case of expressly declared public necessity. Such authorisations have been granted for example in the mining sector. Peru considers that this restriction is primarily motivated by national security reasons but has agreed to reflect it under the National Treatment, thereby placing it under the disciplines of the instrument. This is consistent with the Investment Committee's approach, which encourages adherent governments to refrain from extensive use of the national security clause of the instrument.[5]

Broadcasting is open only to Peruvian nationals and juridical persons organised under Peruvian law and domiciled in Peru. Foreign national may not own more than 40% of the total shares or equity in such a corporation and must be owners or shareholders in a radio or television broadcasting enterprise in their country of origin. If a foreign national is, directly or indirectly, a shareholder, partner or associate in a corporation, that corporation may not hold a broadcasting authorisation in a zone bordering that foreign national's country of origin.

In **air transport**, at least 51% of capital must be owned by Peruvian nationals and be under the real and effective control of Peruvian shareholders or partners permanently domiciled in Peru. This limitation shall not apply to the enterprises constituted under the Law No. 24882 which may maintain the ownership percentage set in this law (70% of foreign ownership). Six months after the company is authorised to provide commercial transportation services, foreign national or foreign citizens may own 70% of the company's capital.

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Only companies with majority Peruvian ownership (51% of the paid-in capital) may supply **water cabotage services** (*i.e.* maritime, lakes and rivers). Water transport and related services supplied in bay and port areas (such as fuel replenishment services, diving, transport of persons) must be supplied by natural persons domiciled in Peru and corporations incorporated and domiciled in Peru and properly authorised Peruvian flag vessels and equipment. In some cases, such as fuel replenishment services, to get the authorisation for the Peruvian flag, the company must be a national ship enterprise.

The above restrictions do not apply in a way which discriminates among countries adhering to the OECD Declaration. No preferential treatment in respect of these restrictions is granted in bilateral investment treaties. Peru's Constitution includes a principle of reciprocity but to date it has not been applied to foreign investments. The Government's presumption is that as far as countries adhere to the OECD Declaration and its National Treatment instrument, reciprocity conditions will not be applied to them.

1.2. Other measures reported by Peru for transparency under the National Treatment instrument

Within "other measures reported for transparency" under the National Treatment instrument (Annex A), Peru notified that specific restrictions and prohibitions may be temporarily imposed by the law for national security reasons on the acquisition, possession, exploitation and assignment of certain goods. To date, this restriction has not been applied to foreign investment.

Peru also reports requirements for companies, whether under foreign or domestic control, to give preferential treatment to nationals when hiring their employees. Service-providing companies must prove their commitment to train nationals for the same occupation. Moreover, foreign natural persons should not represent more than 20% of the total number of employees of an enterprise and their pay may not exceed 30% of the company's total payroll. However there are a number of exceptions to these restrictions.[6]

In addition, employers may request waivers for the percentage related to the number of foreign employees and their share in the company's payroll in the cases involving:

- Specialised professional or technical personnel.
- Directors or management personnel for new or converted business activities.
- Teachers hired for post-secondary education, or for foreign private elementary and high schools; for foreign language teaching in local private schools; or for specialised language centres.
- Personnel working for public or private companies with contractual agreements with public institutions.

- In any other case determined by a Supreme Decree pursuant to specialisation, qualification or experience criteria.

Other measures reported by Peru for transparency concern employment reserved to Peruvian nationals in air and maritime transport. In **air transport**, at least half plus one of the directors, managers and persons who control a company providing commercial aviation service must be Peruvian nationals or having permanent domicile in Peru.

Maritime transport is reserved to a "national ship-owner" or "national ship-enterprise", which are Peruvian national or judicial person organised under Peruvian law, with its principal domicile and real and effective headquarters in Peru, whose business is to provide water transportation services for cabotage or international traffic and which is owner or lessee. The chairman of the board of directors, a majority of the directors and the general manager of a "national ship enterprise" must be nationals and residents in the Republic of Peru. The captain of the Peruvian-flagged vessels must be a Peruvian national and the crew must be staffed with at least an 80% of Peruvian nationals. Foreign-flagged vessels may be used by a "national ship-owner" or "national ship-enterprise" for a period of no more than 6 months for water transportation exclusively between Peruvian ports or cabotage when such entity does not own its own or lease vessels. The owners of foreign-flagged fishing vessels that operate in Peruvian jurisdictional waters must hire a minimum of 30% of Peruvian crew.

There are a number of specific measures which regulate the provision of some services and access to certain professions. As these measures concern only natural persons and not corporations or apply irrespectively of the domestic or foreign origin of enterprises, they are not reflected in the list of exceptions under the National Treatment instrument. Such measures concern in particular security services, which are accessible only to Peruvian nationals by birth and residents in Peru. Notary services can be supplied only by Peruvian nationals and foreign natural or juridical persons cannot be notaries and own notary firm in Peru. In addition, there are 22 regulated professions in Peru, for which registration of natural persons in professional associations is required.[7] Non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru.

Financial services and government procurements are subject to specific regulations but these concern both domestic and foreign companies and thereby are not to be reported as exceptions under the OECD National Treatment instrument. Financial institutions established in Peru to supply financial services in the securities or commodities markets or financial services related to asset management, including by pension fund managers, must be constituted under the laws of Peru.[8] Both domestic and foreign companies must be established as corporations, are subject to a minimum capital requirement according to the type of activity and to the authorisation for organisation and operation delivered the Supervisory Authority of Banks and Securities (*Superintendecia de Banca y Seguros*). Foreign financial institutions providing banking services and established in Peru through a branch must assign to its branch certain capital which must be located in Peru. The operations of the branch are limited by its capital located in Peru. Financial institutions established in Peru to supply financial services in the securities or commodities markets or financial services related to asset management, including by pension fund managers, must be constituted under the laws of Peru and not as branches or agencies.

Peru has notified that with the exception trade in coca, there is **no state or private monopoly**. This reflects the provisions of the Framework Law on Private Investment Growth which abolished the privileges of the State in economic activity and eliminated its monopoly in production and commercialisation of goods and services. As already indicated, the State still maintains the majority stakes in 31 firms, in particular in electricity, banks and finance, securities and real estate, petroleum, ports, water and sanitation and other sectors (see Annex D). These firms continue to play an important role in their respective sectors.[9]

The Legislative Decree No. 1035 adopted on 25 June 2008 abolished a 20% preference margin applied to bidders for **government procurements** that used goods and services elaborated or rendered within the national territory. This decree thus eliminates remaining regulations imposing performance requirements of local content prohibited by TRIMs.

There are no restrictions on free transfer of capital and profits by foreign investors. The Foreign Investment Promotion Law (Legislative Decree No. 662) provides that foreign investors, after having paid all due taxes, have the right to transfer abroad in freely convertible foreign currency and without prior authorisation from any authority of the central government or decentralised public entities, the following amounts:

- The total amount of their capital from investments registered with the competent national organisation, including the sale of shares, interest shares of rights, and capital reduction or partial or total liquidation of the company.
- The total amount of dividend or proven net profits derived from their investments, as well as considerations for the use or enjoyment of assets physically located in the country registered with the competent national organisation, and royalties for the use and transfer of technology including any other constitutive element of industrial property authorised by competent national organisation.

In the cases when foreign currency should be converted into local currency or local currency converted in foreign currency, foreign investors have the right to use the most favourable purchase or sale exchange rate at time of the transaction. Provisions on the movement of capital are also included international investment agreements concluded by Peru.

Are investment authorities working with their counterparts in other economies to expand international treaties on the promotion and protection of investment? Has the government reviewed existing international treaties and commitments periodically to determine whether their provisions create a more attractive environment for investment? What measures exist to ensure effective compliance with the country's commitments under its international investment agreements?

Peru has actively pursued negotiations of bilateral, regional and multilateral investment instruments with the objective to consolidate the legal framework that guarantees and protects investment and helps promoting a sound business climate attractive for foreign investors. Peru has concluded 32 bilateral treaties on investment promotion and protection of which 30 are in force (see Annex B). Peru is party to several FTAs and most of the agreements negotiated recently include an Investment Chapter in particular the FTAs with the US (already ratified) and Chile (awaiting approval by the Chilean Congress), Singapore (ratification pending), Canada (recently signed), EFTA and Mexico (under negotiations).

The recent bilateral investment agreements and investment chapters in FTAs include the national treatment principle and the Most-Favoured Nation (MFN) treatment which apply from the establishment to all stages of the investment process. They refer to the concepts of fair and equitable treatment, investor protection and security contained in the minimum standard of treatment under customary law and "indirect expropriation" treatment. Performance requirements imposed on investors are forbidden. Liberalisation provisions apply horizontally in all cases, economic sectors and activities, except the specific cases listed in an annex on non-conforming measures, which details the norms and rulings not compatible with substantive obligations or in an annex on future reserves, which lists the aspects for which the country is not responsible.

Peru cooperates with the Multilateral Investment Guarantee Agency (MIGA) and signed the agreement with the United States Overseas Private Investment Corporation (OPIC) on the provision of risk coverage of United States' investments in Peru.

To enhance negotiations of international investment agreements, a Negotiating Commission was established in January 2003 under the leadership of *ProInversión* and with participation of representatives of the Ministries of Trade, Foreign Affairs and Economy and Finance. The Commission approved new guidelines to ensure compliance with high international standards on investment treatment and protection and the transparency principles. Existing bilateral treaties are being reviewed to determine whether they meet the new standards. Peru seeks to expand its network of bilateral investment treaties, based on the model agreement used by OECD countries in NAFTA.

Has the government ratified and implemented binding international arbitration instruments for settlement of international disputes?

According to Peru's Constitution, the State and other persons subject to public law may submit the disagreements arising from contractual relationship to the courts (Article 63). Such disputes can also be submitted to national or international arbitration as provided for in the law. The Framework Law for Private Investment Growth establishes that the state, its branch offices, the central, regional and municipal governments and other persons subject to public law as well as companies managed by the state shall be authorised to submit to national or international arbitration all disputes related to their goods and obligations, in conformity with national laws or international treaties, in which Peru is a signatory party, provided that such disputes arise from their relationship with a company subject to private law or under a contract.

Peru has ratified the Convention of the Settlement of Investment Disputes between the States and Nationals of other States (ICSID) (8 September 1993), the Inter-American Convention on International Commercial Arbitration, signed in Panama in 1975 (21 June 1989), and the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (15 October 1988). Peru's agreement model includes a clause on "enforcement of an award" with reference to the Inter-American Convention on International Commercial Arbitration and the 1958 New York Convention. ICSID is considered as international forum where investors may present a claim under the investor-State mechanism for the settlement of disputes under most international investment agreements concluded by Peru. ICSID is also seen as the arbitral forum for contracts where the state grants rights to foreign companies with respect to the exploration, extraction, refining, transportation, distribution of natural resources, the supply of public services or the development of infrastructure projects.

There are currently three pending ICSID arbitration proceedings brought against Peru by foreign investors: Tza Yap Shum v. Republic of Peru (ICSID ARB/07/6); Aguaytia Energy, LLC v. Republic of Peru; (ICSID ARB/06/13); and Duke Energy International Peru Investments No. 1 Ltd v. Republic of Peru (ICSID ARB/03/28). In this latter case, the ICSID tribunal retained its jurisdiction over the dispute with a decision rendered on 1 February 2006. In one case brought against Peru by a Chilean investor (ICSID ARB/03/4) Empresas Lucchetti, S.A. and Lucchetti Peru, S.A. v. Republic of Peru), the ICSID tribunal in its Award of 7 February 2005 held that it had no jurisdiction *ratione temporis* to hear the merits of Lucchetti's claim. A subsequent application for annulment of the Tribunal's Award of 7 February 2005 was rejected by a decision rendered by the *ad hoc* Committee on 5 September 2007. A further ICSID case (ICSID ARB/98/6 Compagnie Minière Internationale Or S.A. v. Republic of Peru) was settled by agreement reached by the parties and the proceeding was discontinued at their request.

2. Investment promotion and facilitation

Investment promotion and facilitation measures, including incentives, can be effective instruments to attract investment provided they aim to correct for market failures and are developed in a way that can leverage the strong points of a country's investment environment (PFI Chapter 2). Peru has adopted an exemplary approach in many aspects of investment promotion and facilitation.

> Does the government have a strategy for developing a sound, broad-based business environment and within this strategy, what role is given to investment promotion and facilitation measures?

The enhancement of investment environment has been an essential element of economic reforms initiated by Peru in the 1990s. Important steps consisted in the consolidation of the legal framework to guarantee international standards for investment protection and the development of a network of bilateral investment promotion and protection agreements. Current efforts focus on further improvement of conditions for private and foreign investment, including investment promotion and facilitation measures.

> Has the government established an investment promotion agency (IPA)? To what extent has the structure, mission, and legal status of the IPA been informed by and benchmarked against international good practices?

The Private Investment Promotion Agency (*ProInversión*) was established in 2002 by merging three agencies previously responsible for such activities, namely *i)* the Commission for Promotion of Investment (COPRI), which implemented the privatisation process of state-owned enterprises, *ii)* the National Commission for Foreign Technologies and Investment (CONITE) responsible for foreign investment, and *iii)* the Economic Division of the Peruvian Promotion Agency (PROMPERU). *ProInversión*'s Executive Committee is composed of eight Ministers and chaired by the President of the Cabinet. The main tasks of *ProInversión* are the following:

- Propose and implement national policy on promotion of private investment in accordance with the guidelines established by the Ministry of Economy and Finance, economic plans and integration policies in line with relevant laws.
- Identify difficulties, obstacles and distortions which affect private investment in coordination with the entities at various governmental levels and the private sector with the objective to overcome them.
- Identify private investment opportunities and potential private investors and promoting their development.
- Support private investors in legal proceedings required for their establishment and their operations.
- Analyse legal and economic environment in view to adopt and recommend legal, administrative or political measures aimed at facilitating the development of private investment and enhancing favourable investment climate in the country.
- Strengthen Peru's image as an investment destination.
- Promote private investment in public services and public infrastructure, government assets, projects and companies through appropriate legal proceedings.
- Provide advice and support to regional and local governments and state agencies with respect to promotion of private investment, including as regards prioritisation, resources availability, financing and legal proceedings.
- Participate in negotiations of international investment agreements.
- Sign and implement legal stability agreements and investment contracts.
- Maintain a registry of foreign investment in accordance with the current laws.

Among *ProInversión*'s activities targeting specifically foreign investors, one recent example is the promotion campaign to attract foreign investors in the development of the Call Centers industry. To fulfill Peru's potential in this area *ProInversión* launched a campaign in 2005 to stimulate the interest of specialized companies and encouraged policy measures such as the elimination of the sales tax for such service exports. Moreover, companies targeting the Spanish speaking market were identified and promotion activity have been undertaken, notably the participation in overseas road shows and the direct mailing to relevant companies. As a result, the Call Center sector in Peru grew by 30% compared to a worldwide growth rate of 9%. Seven foreign companies have already invested in Peru and 13 more investors are considering starting their operations in Peru. For the period 2006-2007, the new investment is estimated at USD 17 million.

Another example of encouraging foreign investment has been the promotion of the agro-industry sector. In 2006, Peru was selected as the beneficiary country of a co-operation fund of USD 120 000 set up by the Spanish government with UNCTAD technical assistance. The program aims at identifying potential Spanish investors from Murcia region and providing them detailed information on the advantages of agro-business environment in Peru. This initiative led one of the major Spanish agribusiness companies (Halcon Group) to establish a joint venture with Peruvian partners.

Is the IPA adequately funded and its performance in terms of attracting investment regularly reviewed? What indicators have been established for monitoring the performance of the agency?

ProInversión's budget is financed through the following channels:

- Resources assigned by the Fund for Promotion of Private Investment (FOPRI) and the Fund for Promotion of Private Investment in Public Infrastructure Works and Public Services (FONCEPRI) in accordance with the relevant laws.
- Resources from donations or technical co-operation with national and international instances.
- Income from administration and services offered by *ProInversión*.
- Additional resources assigned by the Annual Budget Law.

As indicated in Table 2.1, *ProInversión*'s annual budget, which increased by almost 20% in 2007 compared to 2006, is covered mainly from donations and transfers (62% of the total annual budget in 2007) whereas the remaining part originates from its own revenues. In 2007, *ProInversión*'s professional staff consisted of 112 persons of whom 30 are directly working on investment promotion.

Table 2.1. ***ProInversión*'s annual budget in 2006 and 2007 in USD**

	Direct revenues	Donations and transfers	Total
2006	13 180 783	19 691 746	32 872 530
2007	15 003 039	24 302 331	39 305 370

Source: ProInversión.

How has the government sought to streamline administrative procedures to quicken and to reduce the cost of establishing a new investment? In its capacity as a facilitator for investors, does the IPA take full advantage of information on the problems encountered from established investors?

ProInversión participates in the program for the development of e-government, carried out under the supervision of the Presidency of the Council of Ministers and with participation of other agencies such as the National Tax Administration Supervisory Authority (SUNAT) and the National Supervisory Authority of Public Registries. From the business community's perspective, the most important achievement has been the implementation of the electronic registration of companies. In the past, the establishment of a company could take up to more than 70 days due to complex procedures, duplication of requirements and inspections. Under the new system, currently under implementation, the whole process will take only up to 3 days. At present a trial module is posted at the web site.[10]

A public-private working group (*Intermesa*), created by some 25 public and private institutions, in co-operation with international public and private agencies has developed a national plan for municipal-level administrative reform (*TramiFacil*), which seeks to enhance business environment and increase public awareness of the need of such reforms. The programme focuses on simplification of municipal administrative procedures, which affect especially SMEs. The administrative simplification programme is overseen by the national board *Intermesa* and its executive committee, which includes representatives of the Presidency of the Council of Ministers, SUNAT, *ProInversión* and the National Confederation of Private Entrepreneurial Institutions. The success of this initiative is due in particular to strong political backing, close co-operation between the public and private sectors and nationwide monitoring of the results.

To what extent does the IPA promote and maintain dialogue mechanisms with investors? Does the government consult with the IPA on matters having impact on investment?

ProInversión maintains permanent contacts with business associations and companies so as to monitor the investment climate and assist in addressing eventual difficulties. The agency is also working with IFC and several private and public institutions organised under *Tramifacil* to identify and remove administrative bottlenecks and sectoral restrictions in co-operation with relevant sectoral agencies.

What mechanism has the government established for the evaluation of the costs and benefits of investment incentives, their appropriate duration, their transparency, and their impact on the economic interests of other countries?

Peru's existing tax incentives are applied on a sectoral or territorial basis irrespective of investors' national or foreign origin. General incentive programmes to promote business activity and investment take usually the form of fiscal exemptions, in particular to the General Sales Tax (IGV) and the Selective Consumption Tax (ISC). Peru's Export, Processing, Industry, Marketing and Service Centres (CETICOS) of Ilo, Matarani and Paita, and the Tacna Free Zone (ZOFRATACNA) also enjoy a number of benefits, such as exemption from tariff duties and other taxes levied on imports and exemptions from income tax and other taxes until 2012. The newly created Special Economic Zone of Puno will enjoy similar benefits.[11]

However, the high costs associated with the granting of tax exemptions[12] have prompted the government to design the new general framework introduced in 2007. The framework seeks to streamline existing tax benefits, incentives and exemptions through the evaluation of their costs and impact on economic growth and envisages the elimination of tax benefits which have no impact on welfare, increase risk of differentiated treatment or encourage illegal activities.

In accordance with Legislative Decree No. 977 which entered into force in March 2008, legislative proposals concerning tax benefits must be accompanied by a written justification explaining the objective and scope of the proposed measure and its compliance with the government's Multiannual

Macroeconomic Framework. The analysis should include estimated fiscal costs and specify other measures put in place to compensate for lost fiscal revenues resulting from the proposal. The justification should also present expected economic benefits supported by relevant studies and documents. Legislative proposals must clearly define targeted beneficiaries of the tax benefits which should not exceed six years. Possible extension of tax benefits up to additional three years is subject to an in-depth evaluation which has to be conducted one year before the expiration of the corresponding measure. Such evaluation should consider fiscal costs and assess the investment and employment impacts of tax benefits on the sectors and areas concerned.

A report must be submitted to Congress on any tax exemptions, incentives or benefits granted by various ministries which will subsist after March 2009. The report to Congress has to contain the assessment of these measures, justify their extension and include the plan for their gradual elimination.

The Peruvian government accepts the commitments under the International Investment Incentives and Disincentives instrument of the OECD Declaration on International Investment and Multinational Enterprises (MNE) by which countries recognise the need to give due weight to the interest of other adhering countries affected by laws and practices in this field and endeavour to make measures as transparent as possible.

What steps has the government taken to promote investment linkages between businesses, especially between foreign affiliates and local enterprises? What measures has the government put in place to address the specific obstacles faced by SME?

In collaboration with UNCTAD, *ProInversión* is implementing a technical co-operation programme, which includes a module on promotion of entrepreneurial relationship (EMPRETEC) to assist SMEs and individual entrepreneurs, especially women, in improving their skills and expanding their business. The programme also encourages association among entrepreneurs, the development of clusters and expansion of modern business practices through the creation of a global network. The programme EMPRETEC is implemented in 2008-2009.

Some other ongoing initiatives are also relevant for SMEs such as the new system of the electronic establishment of companies, simplification of administrative procedures for granting licenses and construction permits (see above) given that the difficulties in these areas are particularly harmful for this category of enterprises.

Has the government made use of international and regional initiatives aimed at building investment promotion expertise, such as those offered by the World Bank and other intergovernmental organisations? Has the IPA joined regional and international networks?

ProInversión is member of World Association of Investment Promotion Agencies (WAIPA) and has received technical assistance from a number of international agencies such as FIAS, UNCTAD and IFC. It has also concluded several co-operation agreements and memoranda of understanding with different agencies, notably the United States Overseas Private Investment Corporation (OPIC), the Finnish Fund for Industrial Cooperation (FINNFUND), the Italian Agency SIMEST, the Japan Institute for Overseas Investment (JOI), Korea Trade-Investment Promotion Centre (KOTRA), China Council for Promotion of International Trade (CCPIT) and China Investment Promotion Agency. Similar agreements are currently negotiated with Brazil's APEX and International Enterprise Singapore.

3. Trade policy

Policies relating to trade in goods and services can support more and better quality investment by expanding opportunities to reap scale economies and by facilitating integration into global supply chains, boosting productivity and rates of return on investment (PFI Chapter 3). Peru's trade policy has been recently subject to an in-depth examination under the WTO Trade Policy Review Mechanism.[13]

What recent efforts has the government undertaken to reduce the compliance costs of customs, regulatory and administrative procedures at the border?

The Peruvian Customs Service is part of the National Tax Administration Supervisory Authority (SUNAT) which is responsible of administration, collection, control and enforcement of international trade of goods, transport and movement of persons. As a part of its trade opening and liberalisation

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policy, Peru has cut down considerably its customs tariffs: the average applied MFN tariff rate decreased from 13.6% in 1999 to 8.2% in April 2007. In parallel, Peru has introduced a number of trade facilitation measures. For example, importers do not need to recourse to a customs broker if they obtain the authorisation by the SUNAT, based on their past record of compliance with the requirements of the General Customs Law. The SUNAT's authorisation is necessary only for imports valued of more than USD 2 000. In 2006, some 36% of customs declarations were submitted to the SUNAT by internet. As a result of different facilitation measures, the customs clearance time has been reduced by one third since 2002.

Peruvian customs authorities seek to maintain a high level of transparency. The SUNAT website (*www.sunat.gob.pe*) includes a "user's orientation" section to assist users and facilitate their understanding of the customs system. It also provides e-mail consultation system enabling users to pose directly questions to customs officials.

As a part of its National Strategic Export Plan 2003-2013, Peru launched the Master Plan for Trade Facilitation in 2004 with the objective to enhance the country's export orientation and international competitiveness. The Plan includes several steps to improve customs procedures in line with best international practices, in particular:

- reduce verification processing time in accordance with the WTO Valuation Agreement;
- develop a Control System of Customs Risk Management based on a statistical model that selects low-risk and high-risk shipments; and
- improve the methods to reduce trade in illegal goods such as counterfeit products or goods imported or exported in violation of international agreements.

The Plan also foresees the creation of a paperless trading system and the establishment of a single window customs facility. Starting 2010, SUNAT will issue "advance rulings" in response to inquiries from users concerning classification or criteria to determine the value of goods to be imported as well as concerning imports of goods exported for repair or alteration in countries which have signed a preferential agreement with Peru.

What steps has the government taken to reduce trade policy uncertainty and to increase trade policy predictability for investors? Are investors and other interested parties consulted on planned changes to trade policy?

SUNAT has maintained a permanent dialogue with customs users. During these consultations, some 170 customs procedures have been identified as possible candidates for simplification which could reduce the costs for companies by some 20%. It has also prepared and made publicly available several publications and guides on different trade and trade facilitation aspects targeting in especially SMEs, for instance on marketing and financing in international trade.

How actively is the government increasing investment opportunities through market-expanding international trade agreements and through the implementation of WTO agreements?

The National Agreement concluded jointly in 2001 by the government, main political parties and representatives of the civil society states as the main goal to boost Peru's production capacity and international competitiveness by relying on three main instruments: *i)* unilateral tariff and trade liberalisation, *ii)* international trade negotiations and *iii)* development policies. The Ministry of Foreign Trade and Tourism (MINCETUR) was created in 2002 to ensure effective implementation of this programme. It has developed several strategic plans, including a medium-term international trade negotiation agenda. Trade-related issues are also discussed with representatives of the private sector, professional associations and trade unions at *ad hoc* meetings with relevant ministries and agencies.

Peru is a founding member of the WTO. It has not signed any of the WTO plurilateral agreements such as the Agreement on Government Procurement. It is nevertheless expected that Peru accedes to the WTO Information Technology Agreement in mid-2008. Peru has been actively involved in negotiations of the Doha Development Round and made a number of proposals regarding for instance intellectual property rights (biodiversity and traditional knowledge) and services (movement of natural persons).

Peru is a member of the Andean Community and had in force comprehensive FTAs with MERCOSUR members and agreements of a narrower scope with the Latin American Integration Association (LAIA). The Trade Promotion Agreement with the United States was ratified by the Peruvian Congress on 28 June 2006 and by the US Congress at the end of 2007. The Economic Complementarity Agreement (ECA) with Chile has been extended and an Early Harvest Protocol was signed with Thailand as the first step in negotiations of a FTA. Currently, Peru is negotiating trade agreements with Singapore, Mexico, Canada, the EFTA, the EC and China and conducting joint studies on the feasibility of starting negotiations with China and South Korea. Peru is an active partner in the Asia-Pacific Economic Cooperation Forum (APEC) and host APEC meetings in 2008 (see Chapter 1 and Annex C).

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4. Competition policy

Competition policy favours innovation and contributes to conditions conducive to new investment. Sound competition policy also helps to transmit the wider benefits of investment to society (PFI Chapter 4). Peru's legal and institutional framework for competition policy has been developed since the beginning of 1990s. It was subject to a peer review by the OECD-IDB Latin American Competition Forum (LACF) in 2004 and a follow-up conducted in the 2007.[14]

Are the competition laws and their application clear, transparent, and non-discriminatory? What measures do the competition authorities use to help investors understand and comply with the competition law and to communicate changes in the laws and regulations?

The 1993 Constitution refers to the fundamental principles of competition policy, notably in Articles 58 (free private enterprise), 60 (economic pluralism) and 61 (oversight of market competition). As part of a broad economic liberalisation programme, Peru has formally introduced competition law and policy by Legislative Decree No. 701 of 5 November 1991. The Free Competition Law states as its main goal "the elimination of monopolistic practices, controls and restrictions of free competition in the production and marketing goods and services". It bans all conduct related to economic activity that constitutes an abuse of dominance and it prohibits anticompetitive agreements, including cartel agreements. The OECD peer review report recommended a legislative initiative aimed at providing for merger control, but this has not yet been introduced, except in the electricity sector.

Do the competition authorities have adequate resources, political support and independence to implement effectively competition laws?

The National Institute for Defence of Competition and Protection of Intellectual Property (INDECOPI) created in March 1993 is the main competition authority also responsible for intellectual property protection and trade remedies. At the beginning of its activities INDECOPI mainly focused on pro-competition education and advocacy. It pursues now a more proactive approach with emphasis on policy enforcement. INDECOPI is an independent agency and its revenues are covered for 5% by the state budget and the remaining funds come from fines and fees charged for registration of intellectual property rights.

INDECOPI's Market Access Commission is responsible for enforcement of the laws on market access (Legislative Decrees 807 and 776) which prohibit the government's anticompetitive regulations, taxes or activities. Disputes in the area of competition policy are within the competence of INDECOPI's Free Competition Commission, independent from the government, which may impose monetary sanctions for violation up to maximum of 1 000 tax units (UIT).[15] Since 2000, this Commission has received more than 90 complaints of violations of the rules on free competition and 12 fines were imposed. Recent competition issues dealt by INDECOPI concerned electric power and energy, land transport, maritime ports and airports, radio broadcasting, telecommunications.[16]

Given INDECOPI's broad responsibilities in competition policy and intellectual property rights, it is essential that it maintains political autonomy in its decision making and disposes of adequate human and material resources. Although INDECOPI is currently considered as one of the most efficient institutions in Peru, the government intends to take further steps to strengthen its capacities.

Peru is negotiating co-operation agreements on competition with several other Latin American countries. Peru also adheres to regional competition rules of the Andean Community.

5. Policy promoting responsible business conduct

Public policies promoting recognised concepts and principles for responsible business conduct, such as those recommended in the OECD Guidelines for Multinational Enterprises, help attract investments that contribute to sustainable development. Such policies include: providing an enabling environment which clearly defines respective roles of government and business; promoting dialogue on norms for business conduct; supporting private initiatives for responsible business conduct; and participating in international co-operation in support of responsible business conduct (PFI Chapter 7). This section focuses on Peru's legal framework which shapes incentives for responsible business conduct and recent measures in support for corporate responsibility initiatives in the areas of human and labour rights and the environment.

5.1. *Human rights*

According to Peru's Constitution (Articles 2 and 3), the provisions regarding human rights and environment contained in treaties, conventions and declarations on human rights in which the Peruvian State is a party have the constitutional rank in the Peruvian legal system. Article 2 of the Constitution enumerates a list of fundamental rights of the person (*i.e.* right to life and liberty, freedom of thoughts and expression, integrity, honour, good

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reputation and equality before the law). Article 3 stipulates that this list does not preclude the guarantee by the Constitution of other rights "based on the dignity of man". Protection of human rights is ensured by several instances, in particular the Public Prosecutor's Department, the Ombudsman Office, Special Prosecutor for Human Rights for the Whole Nation (in charge of jurisdiction and investigation of complaints on human rights violations), the Peace Council (implementing the National Pacification Plan) and the National Council for Human Rights (the agency responsible for promoting and coordinating the protection and observance of fundamental individual rights).

The government implements the recommendations of the 2003 Peruvian Truth and Reconciliation Report. A Commission of Reparation was established to identify the persons who had suffered during the conflict with the Shining Path between 1980 and 2000 and were eligible for reparation. The law provides for a percentage of taxes from mining companies to help finance these reparations. Local community concerns are also taken into account, including through distribution of the benefits generated from mining and oil and gas activities. The State and the producing regions receive 50% of income taxes paid by mining companies, 10% of gross value of oil and gas production and 50% of the income generated from royalties on natural gas production.

5.2. Labour rights

The Constitution and the law provide for the right of association.[17] Workers may form unions on the basis of their occupation, employer affiliation or geographic territory without prior authorisation. Employers cannot condition employment on union membership or non-membership. The Constitution recognises the right of public and private sector workers to organise and bargain collectively. A union has to represent at least 20 workers to become an official collective bargaining agent. Conciliation and arbitration systems are available to solve disputes. The law restricts the number of temporary workers to 20% of a company's workforce. The law provides for the right to strike and this right is exercised in practice. The law restricts unions that represent workers in public services deemed essential by the government from striking. In the four existing export processing zones (EPZs), the use of temporary labour is authorised to allow for greater flexibility in labour contracts and wage rates.

The Constitution prohibits forced or compulsory labour, including by children. The Child and Adolescent Code governs relevant employment and labour practices. The Ministry of Labour is responsible for enforcing child labour laws and its inspectors have the legal authority to investigate reports of illegal child labour practices. Over the last 5 years, the Ministry of Labour carried out approximately 4 000 inspections per year. Firms found guilty of violating child labour laws may be fined and their operations suspended.

The Constitution states that workers should receive a "just and sufficient" wage to be determined by the government in consultation with labour and business representatives and "adequate protection against arbitrary dismissal". Currently, the statutory minimum monthly wage amounts to 550 soles (USD 198). The Constitution provides for a 48-hour workweek, a weekly day of rest and an annual vacation. The Supreme Decree issued in July 2006 strengthened labour inspections and established standards and a national office to supervise inspections.

The 2006-2010 National Human Rights Plan

The National Human Rights Plan for 2006-2010, approved by Supreme Decree 017-MINJUS in December 2005, was prepared by the National Council for Human Rights after a widespread debate involving NGOs, representatives of the private sector and local communities. In the area of labour rights, the Plan recommended a range of measures required to comply with recommendations of the ILO Expert Commission and several other actions, in particular:

- Adaptation of national legislation in line with the provisions contained in international Conventions and Treaties ratified by Peru. Current labour legislation meets international commitments assumed by Peru. A revision is foreseen in view to introduce modifications required within the framework Peru-United States TPA.
- Ratification of the ILO Conventions No. 122 (on National Employment Policy) and No. 129 (on Work Inspection in the Agriculture Sector). Convention No. 122 was ratified on 27 July 1996; ratification of the ILO Convention No. 129 is pending.
- Implementation of the National Plan for the Prevention and Eradication of Child Work, in particular those related to the ILO Conventions No. 138 and 182: the Ministry of Labour is working on the implementation of this Plan. A special committee (CEPETI) has been established for this purpose.
- Ratification of the ILO Conventions No. 97 and 143 and implementation of a system ensuring safe and informed migration of labour force and repression of traffic of persons: ratification pending.
- Implementation of actions related to the ILO Convention No. 81, in particular those related to qualification, preparation, suitability, duties, functions and remunerations of work inspectors, ensuring necessary means and resources for their duties: ratified on 1 February 1960.
- Promote active employment policies designed to fight against inequality of opportunities, particularly among young people and women, as well as discrimination affecting the most vulnerable sectors of the society; the Ministry of Labour is leading a programme (ProJoven) aiming to reduce the unemployment of young people.

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- Adopt measures to assure the principle of equality of opportunities and treatment for men and women when applying for a job; the National Plan on Equal Opportunities is being implemented by the Ministry of Labour.
- Incorporate into national legislation international conventions that foster co-operation programmes related to security and health conditions at work, conventions related to the protection of indigenous people's salaries and conventions: regulations on security and health at work are in force and supervised permanently by the Ministry of Labour.
- Promote and reward good corporate responsibility practices that foster substantial improvements in work and life conditions of the labour; the national use of natural resources and sustainable development; transparency in management information; the fiscal responsibility of enterprises: the Government is drafting the national plan on good labour practices.

The Peruvian Congress has discussed the draft General Labour Law, which would unify various labour regimes and provisions currently dispersed in different laws. The main aspects addressed by the Law include: clarification of different forms of labour intermediation (subcontracting, outsourcing and "worker cooperatives"), greater job protection of workers and the right of collective bargaining by sector and industry. The Law would also ensure that fundamental labour rights in Peru are in line with international standards of human and workers rights. It could also serve as a benchmark for multilateral or bilateral trade negotiations by Peru. Whereas trade unions are very much in favour of this law, the private sector is more reluctant and would prefer a mechanism allowing for sufficient flexibility, especially for SMEs.

The Ministry of Labour of Peru prepared the National Plan on Labour Corporate Responsibility with an objective to disseminate information on good practices in this area and encourage national enterprises to observe them. The National Plan foresees the establishment of a Forum on Labour Corporate Responsibility, supported by a Technical Secretariat to facilitate a dialogue among representatives of the private sector, government, experts, trade unions and the civil society. The Certification of Good Labour Practices, introduced in 2007 by the Ministerial Resolution No. 118-2007-TR, recognises enterprises' commitments to best labour and social responsibility practices, promotion and defence of the fundamental workers rights and an adequate working environment. Such certification will be delivered for one year.

The Peruvian Ministry of Labour proposed to establish a National Directorate for Corporate Responsibility, Union Responsibility and Fundamental Rights to be in charge of development and supervision of policies for promoting of corporate responsibility, equality of opportunities and non-discrimination, freedom of work and other fundamental rights related to work, employment and social protection. Moreover, the government envisages creating a tripartite commission to monitor effective compliance of labour standard commitments, At least 1 000 inspectors have to be hired to ensure compliance with labour standards and re-establish conditions for collective bargaining.

Recent FTA such as one concluded by Peru with Canada include a specific provision on corporate social responsibility stating that each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognised standards of corporate social responsibility in their internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles address issues such as labour, the environment, human rights, community relations and anti-corruption. The Parties therefore remind those enterprises of the importance of incorporating such corporate social responsibility standards in their internal policies (Investment Chapter, Article 810, Canada-Peru FTA).

5.3. *Environmental rights*

The Constitution calls for the sustainable use and preservation of natural resources and Peru has signed most of relevant international treaties and conventions in this area (see Annex C). Protection of natural areas is ensured through the National System that covers 15% of Peru's territory, including 11 national parks and 10 natural reserves. The costs of most serious environmental problems, related in particular to inadequate water supply, sanitation, urban air pollution and land deforestation, were estimated to USD 2.7 billion (equivalent to 3.9% of Peru's GDP).

In line with the state policy and the General Environment Law, the National Commission on Environment (CONAM) created in 1994 and attached to the Presidency of the Council of Ministers is the main instance responsible for promoting, coordinating and supervising the country's environmental policy. A number of other agencies have specific responsibilities, in particular the Institute of Natural Resources (INRENA), created in 1992 (protection of natural resources, regulation of water resources and granting concessions for exploitation of wood), the Institute of the Sea and General Environment Directorates attached to various ministries. The CONAM has introduced the concept of cleaner production and eco-efficiency into the national legislation and regulations. The National Centre for Clean Production which implements these principles helps enhance domestic capacities through advice and support to enterprises. As a part of the National Strategy for the Promotion of Cleaner Production, the first National Award on Cleaner Production was granted in 2005.

The National Plan envisages the establishment of an Autonomous Environmental Authority responsible for environmental issues at the national level, in particular the implementation of an effective environmental enforcement system with participation of representatives of the civil society and promotion of rehabilitation and conservation of natural resources. President Garcia has proposed the creation of a Ministry of Environment as a central authority in charge of environmental policy, including carrying out Environmental Impact Studies of planned investment projects. These different proposals are currently under discussion.

Several initiatives are worth mentioning in the context of environment protection, notably the project on strengthening corporate social responsibility in value chains which is managed by the Centre for Promotion of Small and Medium Enterprises (PROMPYME) of the Ministry of Labour; the project on sustainable productive chain, carried out by the National Commission on Environment (CONAM), which promotes the implementation of Environment Management System (ISO 14001), including by small and medium enterprises (SME). Within this last project, 10 of 16 large participating firms have been certified and 44 SME have implemented the Environment Managing System.

Peru is signatory of most international environment agreements, including Protocol on Environmental Protection, Convention of Biological Diversity, UN Framework Convention on Climate Change, Kyoto Protocol to the UN Framework Convention on Climate Change, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Montreal Protocol on Substances that Deplete the Ozone Layer or International Tropical Timber Agreement 1983 and 1994 (see Annex C).

Peru has already subscribed to most multilateral instruments underpinning the principles and standards embodied in the OECD Guidelines for Multinational Enterprises. The Guidelines, an integral part of the OECD Declaration, stipulate that Peru in the event of its adherence will have to establish a National Contact Point (NCP). Peru is committed to ensure that its NCP will meet the criteria of visibility, accessibility, transparency and accountability and will serve to make the Guidelines better known to business, labour representatives, and other interested parts of civil society. The Peru's NCP will be located in *ProInversión* and allow for stakeholders' involvement.

6. Other selected policy issues

6.1. Tax policy

Main taxes levied in Peru are the income tax, VAT and excise tax. Income tax amounting to 30% is levied on all income earned by taxpayers resident in Peru regardless the nationality of companies, place of incorporation or location of the income source. Reduced rates apply in the agricultural sector and rural activities (15%) and in activities such as lumber extraction, aquaculture, fishing and tourism (10%) and taxpayers in the Amazon region (10%). Tax exemptions concern profits generated by companies incorporated or established in the Centres for Exports, Transformation, Industry, Trading and Services (CETICOS) located in Ilo, Matarani and Paita.

Legislative Decree No. 973 of 26 March 2007 introduced a special scheme of anticipated recovery of VAT applied to investments in all economic sectors. The regime allows the return of VAT paid on imports and/or local purchases of new capital goods, new intermediate goods, services and construction contracts carried out in the pre-operative stage of the projects of at least USD 5 million subject to law-contracts (*contratos-ley*) signed with *ProInversión* and the relevant sectoral Ministry. Law on Promotion and Formalisation of Microenterprises and Small Business (Legislative Decree No. 28015) introduced a simplified tax regime for such categories of firms. Under certain conditions, taxpayers can qualify for a simplified Income Special Regime which imposes a rate of 1.5% (for trade and/or industrial activities) or 2.5% (for service activities). Depreciation deductions vary between 25% (*e.g.* data processing equipment) to 3% (building and constructions) at the annual basis. Taxes levied by local government remain low.

Peru ratified two agreements to avoid double taxation and prevent fiscal evasion (with Chile in January 2003 and with Canada in February 2003) and the two others (with Brazil and Spain) have been sent for approval to Congress. Several other agreements are in different stages of negotiations, in particular with France, Sweden, Italy, the United Kingdom, Switzerland and Thailand. In addition, SUNAT has signed an agreement with the United States' tax administration and with Ecuador Customs on data exchange.

6.2. Human resource development

Human resources development is a prerequisite needed to identify and to seize investment opportunities. Policies that develop and maintain a skilled, adaptable and healthy population, and ensure the full and productive deployment of human resources, thus support a favourable investment environment (PFI Chapter 8).

Within the framework of its overall development strategy embodied in the National Agreement, Peru's government has undertaken a comprehensive human resource development policy. The main instrument in this area is the Law on Labour Formation Modalities (No. 28518) and its accompanying regulations (Supreme Decree No. 007-2005-TR). Their main objectives are to achieve better interconnection between the supply and demand on the labour market, improve employment and labour productivity as well as workforce flexibility and adaptation. The Law which concerns only the private sector

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encourages close co-operation between education institutions and business and anticipation of future workforce requirements.

The National Policy Guidelines for Professional Formation (Supreme Decree 021-2006-ED) establishes a number of objectives in particular improving professional training and helping reconversion. They also encourage co-operation between local, regional, national and international actors to develop professional training. The Strategic Multiannual Plan for Education sets up a number of tasks such as increase the quality and the equity in the education sector and revalorisation of the teachers' careers.

Peru has been actively participating in the work of the APEC Human Resources Development Working Group including in its capacity building, education and labour and social networks. In this context, Peru co-sponsored with China and the United States the Symposium on "Education to Achieve 21st Century Skill for All: Respecting the Past to Move towards the Future" (Xian, China, January 2008), which has prepared the agenda and work for the forthcoming 4th APEC Education Ministerial Meeting to be held in Lima.

6.3. Infrastructure and financial sector development

Sound infrastructure development policies ensure scarce resources are channelled to the most promising projects and address bottlenecks limiting private investment. Effective financial sector polices facilitate enterprises and entrepreneurs to realise their investment ideas within a stable environment (PFI Chapter 9).

According to Legislative Decree No. 839 and Supreme Decree No. 059-96-PCM, nationwide public infrastructure and utilities and the concession process are handled by one state agency – *ProInversión*, which is responsible to publicise all public tender processes. All concession agreements should include a clause on the projects' economic balance, which means that if – due to the legislative changes – the concessionaire's profit decreases or its costs increase, the economic balance should be re-established. The private investor has a guarantee that if the State executes the redemption clause, which allows it to terminate the concession unilaterally, the State shall pay to the concessionaire the total invested amount and the loss of potential profit. Concession agreements also establish that dispute are to be solved by direct negotiation or, if not possible, by arbitration. Major disputes (*i.e.* disputes for economic damages over USD 5 million) can be brought to ICSID.

ProInversión has developed the risk matrixes to identify, assign and mitigate possible risks related to concession agreements based on the principle that risk should be assumed by the party that can manage it better. To ensure competitive projects and prices for concession projects, *ProInversión* carries out frequent road shows to attract more investment from different countries. If a project fails to be self-sustaining and requires the State's co-financing, the selection process takes into account the level of the proposed state involvement so as to allow the rational use of public resources and lesser costs for the users.

Since 1999, more than 30 concession agreements have been concluded, mainly in transport (11 projects) and telecommunications (10 projects) and a limited number of projects in electricity, tourism, agriculture and sanitation. Total planned investments under existing projects amount to more than USD 7 billion (see Annex E).

Several ministries involved in infrastructure investment have developed specific national plans and carried out infrastructure projects. For example, the Ministry of Transportation and Communications has approved the Intermodal Transportation Plan for 2004-2023 which contains a preliminary infrastructure concession programme, based on the current situation and future needs. Specific programmes also exist for railways and ports. The National Public Investment System (SNIP) under the Ministry of Economy and Finance is responsible for the best use of public resources, establishment of technical standards and project feasibility of public investment projects. The National Strategic Planning Centre (CEPLAN) to be established under the Presidency of the Council of Ministers will be the main regulatory agency, in charge of coordinating decentralised local and regional efforts. Once established, CEPLAN will be responsible for monitoring specific development plans and ensuring co-operation of different public entities with the private sector. The person in charge of CEPLAN has not yet appointed by the Prime Minister.

The authorities plan to submit a legal framework for public-private partnership operations to Congress in 2008. This new concession framework would differentiate between concessions that require government co-financing or guarantees, subject to feasibility studies and other operations, for which the approval process could be faster. Moreover, a new programme "Build and Transfer" (B&T) is under consideration to facilitate investment in the mining regions. Private sector companies would execute investment projects and deduct investment-related costs of up to 30% of their annual income tax liabilities with the central government. Such projects should be subject to SNIP procedures and reported in a transparent manner in the fiscal accounts.[18]

6.4. Fight against corruption

Article 25 of the Civil Service Law, (Legislative Decree No. 276 of 6 March 1984) establishes that civil servants are liable on civil, criminal and administrative terms for compliance with administrative and legal regulations in execution of public service, notwithstanding disciplinary sanctions for any offenses committed. The Criminal Code defines the following offenses which are subject

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to sanctions: *i)* active or passive bribery; *ii)* passive corruption; *iii)* illegal exercise of duties. The Law No. 27815 on Public Service Code of Ethics provides for the applicable sanctions in the case of infraction, taking into account the criteria such as damage caused to the public or the public administration, impact on procedures, the nature of the duty and the position of the offender and reiteration or repeated offense.

According to the Organic Law of the National Control System, the Office of the General Controller of the Republic receives claims and suggestions from citizens concerning public administration and deals. The identity of the claimants and the content of claims are protected by the principle of privacy. The Ombudsman defends the constitutional and fundamental rights of the people and communities and supervises compliance with public administration duties.

The National Anti-Corruption Office created in 2007 is a permanent office under the Presidency of the Council of Ministers and enjoys operational and technical autonomy for exercising its duties. The Head of the Office is assigned by the President of the Republic for a three year period and may attend the sessions of the Council of Ministers without voting rights. The main responsibilities of the Office are the following:

- Development of corruption prevention measures affecting in particular access to public information.
- Promotion of ethics in public service.
- Preparation of the National Plan on public ethics and the fight against corruption, which should contain measures to prevent, investigate and promote public ethics, citizens' watch and eradicate corruption.
- Submit an annual report to the Council of Ministers detailing progress, results and perspectives in the fight against corruption and integrity.
- Coordination with private institutions for improving the performance of their duties.

In addition several other initiatives have been undertaken in this area, the most important being the creation of the National Council for Public Ethics in 2001. This Peruvian branch of Transparency International was established by four organisations (Exporters Association, Andean Commission of Jurists, Transparency Civil Association and the Prensa e Sociedad Institute) with the objective to fight against corruption in the private sector and promote business transparency, ethics and integrity in co-operation with the public sector and citizens at large.

Peru's participation in the Inter-American Convention against Corruption was ratified by the Legislative Resolution No. 26757 of March 1997 and entered into force in 4 July 1997. The UN Convention against Corruption was approved by the Legislative Resolution No. 28357.

Notes

1. The Registry of Real Estate includes the following Registries: Registry of Properties (which will unify in two years the Real Estate Registry, Urban Property Registry and the Rural Property Special Section); Property Transfers; Urban Developments; Mortgages; Ownership of Certificates; Registries of Ships, Fishing Vessels and Airplanes; Registry of Mining Rights: Registration of Concessions for the Exploitation of Public Services.
2. The Registry of Personal Property includes: Vehicle Property Registry, Agricultural Pledge Registry, Industrial Pledge Registry and Fiscal Registry of Term Sales.
3. By the end of 2006, 32 500 new owners registered by COFOPRI received loans of some USD 700 million.
4. The most important arbitration centres are: Lima Chamber of Commerce (*www.camaralima.org.pe/);* American Chamber of Commerce in Peru (*http://amcham.org.pe/arbitraje*); and Bar Association of Lima (*www.cal.org.pe*).
5. OECD (2005), National Treatment for Foreign-Controlled Enterprises, Annex C: Clarifications of the National Treatment Instrument, p. 112.
6. The imposed percentages do not apply in the following cases: *i)* when the foreign nationals providing services are spouse, parent, child or sibling of a Peruvian national; *ii)* foreign employees working for foreign companies providing international land, air and water transport under a foreign flag and registration; *iii)* foreign employees of multinational service companies or banks, subject to the law governing specific cases; *iv)* foreign investors, when their investment permanently maintained in Peru amounts at least 5 Tributary Tax Units (UIT) during the duration of their contracts; *v)* artists, athletes or other service-providers engaged in public performances in Peruvian territory for a maximum of three months a year; *vi)* foreign nationals with immigrant visa; *vii)* nationals whose countries have labour reciprocity or double nationality agreements with the Republic of Peru; *viii)* foreign personnel providing services in the country on behalf of bilateral or multilateral agreements honoured by the Peruvian Government.
7. Professionals with diplomas issued by foreign institutions such as lawyers or accountants must validate their degrees to practice in Peru. See WTO (2007), *Trade Policy Review of Peru,* Report by the Secretariat, p. xi.
8. Reference: Supreme Decree No. 093-2002-EF, Articles 130, 167,185, 204, 223, 259, 270, 302, 324 and 17th Final Provision; Law on Investment Funds and Their Administrative Entities (Legislative Decree No. 862) Article 12; Commodity Exchange Law (No. 26361, amended by Law No. 27635) Articles 2, 9 and 15; Law on Private Pension Fund Management System (Supreme Decree No. 054-97-EF) Article 130.
9. According to the National Fund for the Financing of State Business Activity (FONAFE), the state-owned enterprises represent approximately 30% of electricity generation and 15% of distribution in Peru. Assets of Banco de la Nación correspond to 16% of total banking assets in Peru.
10. The system will allow the electronic establishment of companies via a "single virtual portal" (*www.serviciosalciudadano.gob.pe*) by clicking on the link "*Constitucíon deempresas en linea*". After creating a password, the procedure allows the registration of company's general information in the Public Registries, issuing documents in notaries, obtaining the recognition by the National Tax Administration Supervisory Authority (SUNAT) and finally getting a document

authorising the establishment of a company. The procedure will provide better legal security and considerably reduce administrative expenses and notary costs.

11. For more details see WTO (2007), *Trade Policy Review of Peru*, Report by the Secretariat, pp. 54-55.
12. According to official estimates, tax revenues losses resulting from these exemptions will amount PEN 7 320 million in 2008, *i.e.* approximately 2.05% of GDP.
13. WTO (2007), Trade Policy Review of Peru, Report by the WTO Secretariat, WTO document WT/TPR/S/189/Rev.1, 17 December 2007.
14. See in OECD (2006), *Competition Law and Policy in Latin America, A Peer Review of Peru and OECD* (2007), *Peer Reviews of Competition Law and Policy in Latin America: A Follow-Up – Argentina, Brazil, Chile, Mexico, Peru*.
15. The Tributary Tax Unit (UIT) is an amount of reference used in tax regulations to maintain in constant values the tax basis, deductions, and other tax-related aspects that the legislator deems convenient to be in constant values. In 2008, 1 UIT is equivalent to S/3 500 corresponding approximately to USD 1 259 (based on the exchange rate of S/2.78 per USD).
16. See *www.indecopi.gob.pe*.
17. The right of association is stipulated in Article 28 of Chapter II of Title I of the National Constitution of Peru, of 29 December 1993. It is also specified in the law of Work Collective Relations (Decree No. 25593 of 2 July 1993).
18. IMF (2007), *Peru – Second Review under Stand-By Arrangement*.

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ANNEX A

Peru's Exceptions to National Treatment

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Land and real estate

Foreign enterprises and Peruvian enterprises owned in whole or in part by foreign nationals are not authorised to acquire directly or indirectly land or water (including mines, forest land or energy resources) located within 50 kilometres of the Peruvian border. Exceptions may be authorised by Supreme Decree approved by the Council of Ministers in the case of expressly declared public necessity.

Reference: Peru's Constitution, Article 71; Legal Framework for Private Investment Growth (Legislative Decree No. 757), Article 13.

Broadcasting

Only Peruvian nationals or corporations organised under Peruvian law and domiciled in Peru may be authorised or licensed to offer free-to-air radio communications. Foreign nationals may not own more than 40% of the total shares or equity in such a corporation and must be owners or shareholders in a radio or television broadcast enterprise in their country of origin. No foreign national may receive or hold an authorisation or a license directly or through a sole ownership.

If a foreign national is, directly or indirectly, a shareholder, partner, or associate in a corporation, that corporation may not hold a broadcasting authorization in a zone bordering that foreign national's country of origin, except in a case of public necessity authorized by the Council of Ministers. This restriction does not apply to corporation with foreign equity which have two or more current authorizations, as long as they are of the same frequency band.

Reference: Law on Radio and Television (Law No. 28278, 16 July 2004) Article 24; Regulations on Radio and Television Law (Supreme Decree No. 005-2005-MTC, 15 February 2005) Article 20.

Air transport

Investment in national commercial aviation services is reserved to Peruvian natural persons or corporations.

At least 51% of capital must be owned by Peruvian nationals and be under the real and effective control of Peruvian shareholders or partners permanently domiciled in Peru. This limitation shall not apply to the enterprises constituted under the Law No. 24882, which may maintain the ownership percentage set in such law (70% of foreign ownership). Six months after the company is authorized to provide commercial air transportation services, foreign nationals or foreign citizens may own up to 70% of the company's capital.

Reference: Civil Aeronautic Law (Law No. 27261, 10 May 2000) Article 79. Civil Aeronautic Law's Regulations (Supreme Decree No. 050-2001-MTC, 26 December 2001) Article 159, 160 and VI Complementary Provision.

Water transport

Only companies with majority of Peruvian ownership (51% of the paid-in capital owned by Peruvian citizens) may supply water cabotage services (including maritime transport and transport by lakes and rivers).

Reference: Law on National Merchant Navy Reactivation and Promotion (Law No. 28583, 22 July 2005) Articles 4.1, 6.1, 7.1, 7.2., 7.4 and 13.6; Regulation No. 26620 (Supreme Decree No. 028 DE/MGP, 25 May 2001), Article I-010106, sub-section *a)* Supreme Decree No. 056-2000-MTC 31 December 2000; Ministerial Resolution No. 259-2003-MTC/02, 4 April 2003.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

PERU'S OTHER MEASURES REPORTED FOR TRANSPARENCY

I. Measures based on public order and essential security considerations

All sectors

The law may, solely by reason of national security, temporarily impose specific restrictions and prohibitions for the acquisition, possession, exploitation and assignment of certain goods.

Reference: Peru's Constitution, Article 72.

Government purchasing

The purchase of goods and hiring of services for military purposes have been classified into 2 categories: *i)* military secrets, and *ii)* others. Purchases of goods and services classified as military secrets are exempted from the General Procurement Law.

Reference: Supreme Decree 083-2004-PCM.

II. Monopolies and concessions

Public and private monopolies

None.

III. Other

All employers in the Republic of Peru, independently of their activity or nationality, shall give preferential treatment to nationals when hiring their employees.

Service-providing companies must show proof of the commitment to train national personnel in the same occupation. Foreign natural persons may not represent more than 20% of the total number of employees of an enterprise and their pay may not exceed 30% of total payroll for wages and salaries. The law provides for a number of exemptions from applying these percentages.

Reference: Foreign Worker Contract Law (Legislative Decree No. 689, 5 November 1991) Articles 1, 2, 4, 5 (amended by Law No. 26190) and 6.

Security services

Senior managers of an enterprise that supplies security services must be Peruvian nationals by birth and be residents of the Republic of Peru.

Reference: Regulations on Private Security Services (Supreme Decree No. 005-94-IN, 12 May 1994) Articles 81 and 83.

Air transport

At least half plus one of the directors, managers, and persons who control or manage a company rendering commercial aviation service may by Peruvian nationals or have permanent residence in the Republic of Peru.

Reference: Civil Air Transport Law (No. 27261, 10 May 2000) Article 79; Regulations on Civil Air Transport (Supreme Decree No. 050-2001-MTC, 26 December 2001) Articles 147, 159, 160 and Complementary Provision VI.

Maritime Transportation

The chairman of the board of directors, a majority of the directors, and the General Manager of a National Ship Enterprise must be nationals and resident in the Republic of Peru. A "National Ship-owner" or "National Ship Enterprise" means a Peruvian national or corporation organized under Peruvian law, with its principal domicile and real and effective headquarters in the Republic of Peru, whose business is to provide water transportation services for cabotage or international traffic and which is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant ship and that has obtained the relevant Operation Permit from the General Aquatic Transport Directorate.

The captain of the Peruvian-flagged vessels must be a Peruvian national and the crew must have at least 80% of Peruvian nationals authorized by the "Dirección General de Capitanías y Guardacostas". In cases where there is no duly qualified Peruvian captain, a foreign national may be authorised to serve as captain. Only a Peruvian national may be a licensed harbour pilot.

Foreign-flagged vessels may be used by a "National Ship-owner" or "National Ship Enterprise" for a period of no more than six months for water transportation exclusively between Peruvian ports or cabotage when such an entity does not own its own vessels or lease vessels.

Reference: Law on National Merchant Navy Reactivation and Promotion (Law No. 28583, 22 July 2005) Articles 4.1, 6.1, 7.1, 7.2, 7.4 and 13.6; Supreme Decree No. 028 DE/MGP, 25 May 2001; Regulations on Law No. 26620, Article I-010106, sub-section *a)*.

Fishing

The owners of foreign-flagged fishing vessels that operate under Peruvian jurisdiction waters must hire a minimum of 30% of Peruvian crew.

Reference: Regulations on General Fishing Law (Supreme Decree No. 012-2001-PE, 14 March 2001).

Official aids and subsidies

None.

Measures reported at the level of territorial subdivisions

None.

ANNEX B

*Bilateral Investment Agreements Concluded by Peru**

As of March 2008

	Date of signature	Date of entry into force
Argentina	10 November 1994	24 October 1996
Australia	07 December 1995	02 February 1997
Belgium and Luxemburg	12 October 2005	
Bolivia	30 July 1993	19 March 1995
Canada	14 November 2006	20 June 2007
Chile	02 February 2000	03 August 2001
China	09 June 1994	01 February 1995
Colombia**	26 April 1994	21 March 2004
Cuba	10 October 2000	25 November 2001
Czech Republic	16 March 1994	06 March 1995
Denmark	23 November 1994	17 February 1995
Ecuador	07 April 1999	09 December 1999
El Salvador	13 June 1996	15 December 1996
Finland	02 May 1995	14 June 1996
France	06 October 1993	30 May 1996
Germany	30 January 1995	01 May 1997
Italy	05 May 1994	18 October 1995
Korea	03 June 1993	20 April 1994
Malaysia	13 October 1995	25 December 1995
Netherlands	27 December 1994	01 February 1996
Norway	11 March 1995	05 May 1995
Paraguay	31 January 1994	18 December 1994
Portugal	22 November 1994	18 October 1995
Romania	16 May 1994	01 January 1995
Singapore	27 February 2003	13 August 2006
Spain	17 November 1994	17 February 1996
Sweden	03 May 1994	01 August 1994
Switzerland	22 November 1991	23 November 1993
Thailand	15 November 1991	15 November 1993

As of March 2008 *(cont.)*

	Date of signature	Date of entry into force
United Kingdom	04 October 1993	21 April 1994
United States***	12 April 2006	
Venezuela	12 January 1996	18 September 1997

* Including Investment Chapters of FTAs.

** A new bilateral investment agreement was recently signed with Colombia. The approval is pending.

*** Peru-US Trade Promotion Agreement was ratified by Peru on 28 June 2006 and by the United States on 14 December 2007.

Source: www.proinversion.gob.pe.

ANNEX C

Peru's Membership in International Organisations and Adherence to International Conventions

a) Membership in International Organisations

Asia Pacific Economic Co-operation (APEC).

Economic Commission for Latin America and the Caribbean (ECLAC).

G11.

G15.

G19.

G24.

G77.

International Centre for Settlement of Investment Disputes (ICSID) .

Inter-American Development Bank (IADB).

International Atomic Energy Agency (IAEA).

International Labor Organization (ILO).

International Monetary Fund (IMF).

International Organization for Migration (IOM).

Interpol.

Latin American Integration Association (LAIA).

Mercosur (associate).

Multilateral Investment Guarantee Agency (MIGA) (World Bank).

Non-Aligned Movement.

Organisation of American States (OAS).

Pacific Economic Co-operation Council.

Rio Group.

South American Community of Nations (SACN).

The Agreement on the Global System of Trade Preferences (GSTP).

United Nations (UN).

United Nations Conference on Trade and Development (UNCTAD).

United Nations Economic Commission for Latin America and the Caribbean (ECLAC).

United Nations Educational, Scientific and Cultural Organization (UNESCO).

United Nations Food and Agriculture Organization (FAO).

United Nations Industrial Development Organization (UNIDO).

World Bank.

World Health Organization (WHO).

World Intellectual Property Organization (WIPO).

World Trade Organization (WTO).

b) Adherence to International Conventions

Crime and corruption

United Nations Convention against Corruption (UNCAC), ratified on 16 October 2004.

United Nations Convention against Transnational Organized Crime (UNCTOC), ratified on 23 January 2002.

OAS Inter-American Convention against Corruption, ratified on 4 April 1997.

Environment

Antarctic Treaty (1961).

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1992).

Convention on Biological Diversity (1993).

Convention on Nuclear Safety (1994).

Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) (1990).

Convention on Persistent Organic Pollutants (2001).

Convention on Prevention of Marine Pollution by Dumping of Waste and Other Matter (1972).

Convention on Prior Informed Consent Procedure for Hazardous Chemicals and Pesticides (PIC) (1998).

Convention on Protection of the Ozone Layer (1985).

Convention on the International Trade in Endangered Species of Wild Flora and Fauna (CITES) (1975).

Convention on Wetlands of International Importance Especially as Waterfowl Habitat (1975).

Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1996).

Framework Convention on Climate Change (1994).

International Convention for the Regulation of Whaling (1948).

International Tropical Timber Agreement (1985).

Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998) – Signed, but not yet ratified.

Montreal Protocol on Substances That Deplete the Ozone Layer (1989).

Protocol on Environmental Protection to the Antarctic Treaty (1998).

Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Under Water (1963).

Fisheries

Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas (2001).

Human rights

International Covenant on Civil and Political Rights (1976).

Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment (1987).

Convention on the Prevention and Punishment of the Crime of Genocide (1951).

International Covenant on Economic, Social, and Cultural Rights (1976).

International Convention on the Elimination of All Forms of Racial Discrimination (1969).

Convention on the Rights of the Child (1990).

Convention Concerning Indigenous and Tribal Peoples in Independent Countries (1991).

American Convention on Human Rights (1992).

Inter-American Convention to Prevent and Punish Torture (1992).

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International Convention on the Elimination of All Forms of Racial Discrimination (1971).

International investment

Convention on the Settlement of Investment Disputes between States and Nationals of Others States (ICSID) (1993).

Labour

8 Core ILO Conventions all ratified:

Convention 29: Forced Labour Convention (1960).

Convention 87: Freedom of Association and Protection of the Right to Organise Convention (1960).

Convention 98: Right to Organise and Collective Bargaining Convention (1964).

Convention 100: Equal Remuneration Convention (1960).

Convention 105: Abolition of Forced Labour Convention (1960).

Convention 111: Discrimination (Employment and Occupation) Convention (1970).

Convention 138: Minimum Age Convention (2002).

Convention 182: Worst Forms of Child Labour Convention (2002).

Law of the sea

Convention on Law of the Sea (1947).

ANNEX D

State-controlled Enterprises in Peru

Electric power

Empresa de Administración de Infraestructura Eléctrica S.A.

Empresa de Generación Eléctrica de Arequipa S.A.

Empresa de Generación de Energía Eléctrica del Centro S.A.

Empresa de Generación Eléctrica Machupicchu S.A.

Empresa de Generación Eléctrica del Sur S.A.

Empresa Regional de Servicio Público de Electricidad del Oriente S.A.

Empresa Regional de Servicio Público de Electricidad de Puno S.A.A.

Empresa Regional de Servicio Público de Electricidad del Sur Este S.A.A.

Empresa Concesionaria de Electricidad de Ucayali S.A.

Empresa Regional de Servicio Publico de Electricidad del Centro S.A.

Empresa Regional de Servicio Público de Electricidad Electronoroeste Sociedad Anónima

Empresa Regional de Servicio Público de Electricidad Electronoroeste Sociedad Anónima

Empresa de Electricidad del Perú S.A.

Empresa Regional de Servicio Público de Electricidad del Sur S.A.

Empresa de Trasmisión Eléctrica Centro Norte S.A.

Empresa de Servicio Público de Electricidad Electro Norte Medio S.A

Empresa de Generación Eléctrica San Gabán S.A.

Sociedad Eléctrica del Sur Oeste S.A.

Financial services

Banco de la Nación.

Corporación Financiera de Desarrollo S.A.

Fondo MIVIVIENDA S.A.

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Hydrocarbons

Activos Mineros S.A.C.

Perupetro S.A.

Infrastructure and transport

Banco de Materiales S.A.C.

Corporación Peruana de Aeropuertos y Aviación Comercial S.A.

Empresa Nacional de Puertos S.A.

Servicios Industriales de la Marina Iquitos S.R.LTDA.

Servicios Industriales de la Marina S.A.

Water

Servicio de Agua Potable y Alcantarillado de Lima.

Others

Compañía de Negociaciones Mobiliarias e Inmobiliarias S.A.

Empresa Peruana de Servicios Editoriales S.A.

Empresa Nacional de la Coca S.A.

Inmobiliaria Milenia S.A.

Servicios Postales del Perú S.A

ANNEX E

Major Public-Private Concession Projects in Peru

Date	Company/Project	Sector	Transaction (thousand USD)	Planned investment (thousand USD)
31.05.99	Terminal Port of Matarani	Transport	10 892	7 847
21.07.99	Railway System (centre, south and southeast)	Transport		157 000
11.01.00	Project Chillón	Sanitation		80 000
16.02.00	Camisea Natural Gas Project: Exploitation	Hydrocarbon		1 600 000
29.03.00	Servicio de Communicaciones Personales	Telecom	180 000	
20.06.00	Local Telephone Service and Local Bearer	Telecom	9 850	
20.06.00	Local Telephone Service and Local Bearer	Telecom	9 701	
20.10.00	Camisea Natural Gas Project: Transport and Distribution	Hydrocarbon		1 100 000
15.11.00	International Airport Jorge Chavéz	Transport		1 214 000
12.12.00	Local Telephone Service and Local Bearer	Telecom	10 301	
16.02.01	L.E. Pachachaca-Oroya-Carhuamayo-D. Antamina y Aquaylia-Pucallpa	Electricity		65 400
24.05.02	Road Ancón-Huacho-Pativilca	Transport		61 400
05.06.02	ETECEN – ETESUR	Electricity	258 873	10 500
16.07.02	Ecological-Entertainment Centre of Huachipa	Tourism		5 242
17.05.04	Project Olmos	Agriculture		184 800
30.03.05	Personal Communication Service-PCS	Telecom	21 100	11 250
05.05.05	North Amazon Multimodal Axis IIRSA	Transport		223 000
23.06.05	Interoceanic Road Corridor (Sections 2,3,4)	Transport		810 000
20.07.05	Road Section Pucusana Bridge-Cerro Azul-Chinca-Pisco-Ica	Transport		192 000
22.07.05	Water and sewage Service of Tumbes	Sanitation		73 000
12.04.06	Local Fixed Telephony and Local Bearer	Telecom	4 950	
19.06.06	Terminal Port of Callao-New Container Terminal-South Pier	Transport		617 000
18.08.06	Regional Airports	Transport		120 000
31.10.06	Road Buenos Aires-Canchaque	Transport		31 000

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Date	Company/Project	Sector	Transaction (thousand USD)	Planned investment (thousand USD)
26.07.07	Rural Wide Band	Communication		8 850
24.08.07	Civic Centre of Lima	Tourism		12 400
29.08.07	South Interoceanic Corridor(Sections 1,5)	Transport		282 000
27.07.07	Personal Communication Service – D and E Band	Communication	27 000	
27.07.07	Mobil Public Service – "B" Band	Communication	22 220	
28.12.07	Public Service of Telecom-900 MHZ	Communication		45 000
09.01.08	Public Service of Telecom-450 MHZ	Communication		8 700
26.02.08	Electric transmission Lines Carhuamayo-Paragsha-Conococha-Huallanca-Cajamarca-Cerro Corona-Carhuaquero	Electricity		106 141
	TOTAL		554 887	7 026 530

Source: ProInversión.

ANNEX F

Peru's FDI Regulatory Restrictiveness Index

This annex presents Peru's FDI regulatory restrictiveness index, based on the OECD methodology (see Box), and its comparison with other OECD and non-OECD countries.

Box F.1. **Calculating the FDI Regulatory Restrictiveness Index**

The FDI regulatory restrictiveness index is calculated for 9 sectors: *i)* professional services (including legal, accounting, architectural and engineering services); *ii)* telecommunications (fixed and mobile); *iii)* transport (air, road and maritime); *iv)* finance (including insurance and banking); *v)* distribution; *vi)* construction; *vii)* tourism; *viii)* electricity and *ix)* manufacturing.

For each sector, three main categories of restrictions are measured:

- the authorised level of foreign equity holding (0-100 per cent);
- screening and discriminatory notification requirements;
- other restrictions, including limitations on foreign participation in boards of directors, on movement of personnel, and operational restrictions, such as domestic content requirements.

The restrictions are evaluated on a 0-1 scale with "0" corresponding to a completely open sector and "1" to a closed sector. Since a limitation on foreign equity is a decisive barrier, a ban on foreign ownership in a given sector implies a maximum score of 1 as the other restrictions become irrelevant. Market access barriers represented by state-owned monopolies are also scored. The overall restrictiveness index is a weighted average of the sectoral indices, using fixed average FDI and trade shares for weighting individual sectors.

There are a number of important qualifications regarding the reported FDI regulatory restrictiveness scores. The measures are limited to overt regulatory restrictions on FDI and do not capture non-policy institutional or informal

Box F.1. **Calculating the FDI Regulatory Restrictiveness Index** *(cont.)*

restrictions, or policies that may indirectly impinge on FDI, notably economic and social regulations. Nor is the extent of actual enforcement of restrictions factored into the calculations.

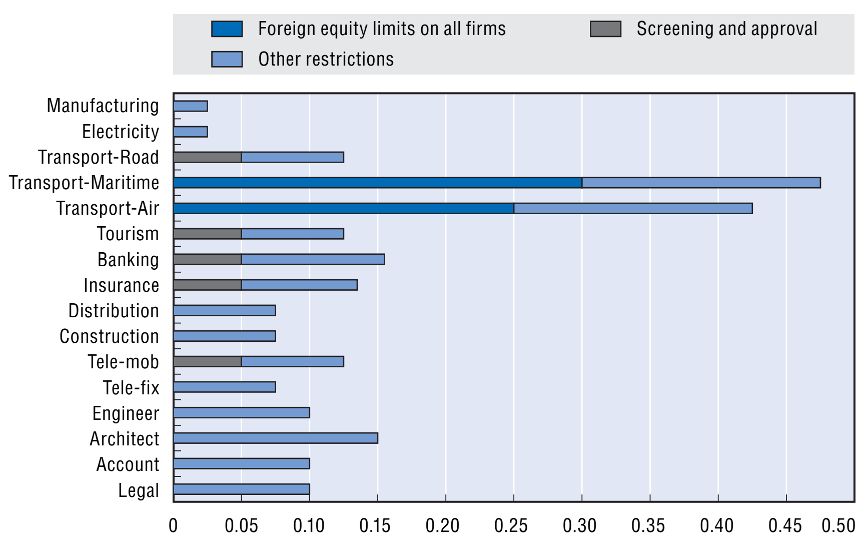
The index used in isolation is not an adequate predictor of countries' FDI attractiveness. Nonetheless, when used in combination with other variables, the index can contribute to explaining variations among countries in attracting FDI.

Source: OECD (2007), "OECD's FDI Regulatory Restrictiveness Index: Revision and Extension to More Economies and Sectors", *International Investment Perspectives*, Chapter 6.

Peru's FDI regulatory restrictiveness index: A cross-sector comparison

Among the sectors covered by the FDI regulatory restrictiveness index, Peru's restrictions on foreign ownership concern air and water transport. Given that the ownership restrictions are weighted highly in the overall index due to the fact that foreign ownership is a necessary and essential condition for FDI, Peru records its highest FDI restrictiveness scores in these two sectors. Among other restrictions, the most important is the requirement applied to all

Figure F.1. **Peru's FDI regulatory restrictiveness index by sectors and types of restrictions**



Source: OECD Investment Division.

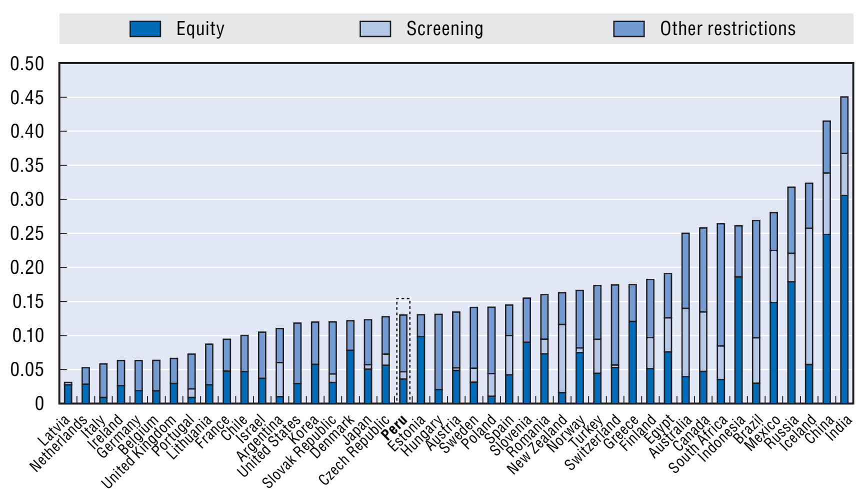
service providers to give preferential treatment to nationals when hiring their employees and the obligation imposing that foreign natural persons may not represent more than 20% of the total number of employees of an enterprise and their pay may not exceed 30% of total payroll.

Peru's sectoral pattern of restrictions is similar to one observed in most OECD and non-OECD countries with transport being often the most restricted sector followed by financial services whereas manufacturing, distribution and construction are usually relatively less restricted sectors also in other countries. The main exception is Peru's low FDI restrictiveness score for the electricity sector which reflects the fact that Peru has abolished state monopoly in this sector and the remaining enterprises with majority state ownership represent the estimated 30% of the country's electricity generation and some 15% of its electricity distribution.

Peru's regulatory restrictiveness index: A cross-country comparison

Figure F.2 compares Peru's average overall FDI restrictiveness index with 44 other countries, including OECD countries, 10 countries adherent to the OECD Declaration on International Investment and Multinational Enterprises and several other non-OECD countries. Peru's overall score of 0.130 is one of the lowest among non-OECD countries and also below the OECD average

Figure F.2. **FDI regulatory restrictiveness index**



Note: The aggregated index covers the following sectors and sub-sectors: business (legal, accounting, architectural and engineering services); telecommunications (fixe-line and mobile telephony); construction, distribution; finance (insurance and banking); tourism; transport (air, maritime and road transport; electricity and manufacturing.

Source: OECD Economics Department-OECD Investment Division joint work.

(0.144). As a result, Peru ranks at the 17th position among 45 covered countries.

Figure F.2 also provides a breakdown for each country's FDI regulatory restrictiveness index according to the types of restrictions on foreign investment, *i.e.* equity restrictions, screening requirements and other restrictions. It confirms that in Peru's case operational restrictions represent the most important segment of the overall index whereas ownership restrictions are relatively low compared to most other countries.

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OECD Investment Policy Reviews

PERU

In July 2008, Peru became the 41st country to adhere to the OECD Declaration on International Investment and Multinational Enterprises, in recognition of its significant progress in pursuing policy reforms to improve its business climate and reduce poverty.

As an adherent to the Declaration, Peru commits to providing national treatment to foreign investors and to promoting responsible business conduct. The country in turn benefits from similar assurance from other adherents to treat Peruvian investors abroad fairly and to encourage multinational enterprises operating in Peru to contribute to economic, social and environmental progress.

This *Review*, undertaken as a part of Peru's adherence process and in co-operation with Peruvian authorities, shows the country's achievements in establishing an open and transparent investment regime with a limited number of restrictions, enabling Peru to rank among the most open economies. Recent governmental initiatives seek to further reduce administrative barriers to investment, streamline and simplify investment incentives, and promote responsible business conduct practices.

The *Review* reflects the OECD's mission to help all governments improve their investment climate through peer learning and the sharing of best practices.

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